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CHARTER

OF

THE CITY AND COUNTY OF SAN FRANCISCO

IN EFFECT JANUARY 8, 1900

WITH
AMENDMENTS OF FEBRUARY 5, 1903
AND
AMENDMENTS OF NOVEMBER 5, 1907

ANNOTATED BY
W. S. CHURCH
OF THE SAN FRANCISCO BAR

AUTHOR OF TREATISE ON HABEAS CORPUS, ETC.

SAN FRANCISCO
BENDER-MOSS COMPANY
1910

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THE MAYOR

AND

BOARD OF SUPERVISORS

OF THE

CITY AND COUNTY OF SAN FRANCISCO

1910

HON. P. H. McCARTHY, Mayor,
And Ex-Officio President Board of Supervisors.

W. R. HAGERTY, Clerk.

MEMBERS.

PAUL BANCROFT
EDWARD L. CUTTEN
CORNELIUS DEASY
MATT HARRIS, SR.
JAMES EMMETT HAYDEN
TIMOTHY B. HEALY
JOHN L. HERGET
OSCAR HOCKS
JOHN A. KELLY
JOHN R. KNOWLES
ROBERT J. LOUGHERY
JOHN P. McLAUGHLIN
TIMOTHY P. MINEHAN
CHARLES A. MURDOCK
CHARLES A. NELSON
THOMAS P. O'DOWD
WILLIAM C. PUGH
JOHN O. WALSH

STANDING COMMITTEES.

Artificial Lights: Walsh, Nelson, Cutten; meets at call of chairman.

Building Laws: Pugh, Healy, Hayden; meets at call of chairman.

Charities and Corrections, Prisons and Reformatories: Deasy, Knowles, Murdock; meets at call of chairman.

Charter Amendments: O'Dowd, Loughery, Walsh, Hayden, Bancroft; meets at call of chairman.

Civil Service: Healy, O'Dowd, Hocks; meets at call of chairman.

Education: McLaughlin, Healy, Hocks; meets at call of chairman.

Electricity: Deasy, Nelson, Bancroft; meets at call of chairman.

Equalization of Assessments: Walsh, Deasy, Cutten; meets at call of chairman.

Finance: Kelly, Herget, McLaughlin; meets Fridays, 2 P. M.

Fire: Knowles, Minehan, Pugh; meets Thursdays, 1 P. M.

Free Market: McLaughlin, Pugh, Harris; meets at call of chairman.

Hospital and Health: Healy, Walsh, Nelson; meets second and fourth Wednesdays, 11 A. M.

Judiciary: Loughery, O'Dowd, Bancroft; meets at call of chairman.

Licenses: O'Dowd, Deasy, Harris; meets at call of chairman.

Outside Lands: Knowles, Minehan, Cutten; meets at call of chairman.

Police: Herget, Deasy, Knowles; meets second and fourth Fridays, 1:30 P. M.

Printing: Minehan, Walsh, Murdock; meets second and fourth Fridays, 3 P. M.

Public Building: Nelson, Pugh, Harris; meets Tuesdays, 1:30 P.M.

Public Utilities: Pugh, Walsh, Herget, Loughery, Hocks; meets at call of chairman.

Streets, Sewers and Parks: McLaughlin, Loughery, Deasy; meets Thursdays, 2:30 P. M.

Telephone Rates: Loughery, Minehan, Healy; meets at call of chairman.

Water Rates: Nelson, O'Dowd, Murdock; meets at call of chairman.

INTRODUCTORY.

The purpose of this volume is to present all available material concerning the Charter of the City and County of San Francisco. An effort has been made to get all cases bearing on the subject, and it is hoped that no important ones have been omitted.

Liberal use has been made of opinions which issued from the City Attorney's office between January 3, 1899, and June 30, 1902, a period which included the first two and a half years under the new Charter. These opinions were pronounced on many matters not yet passed upon by the courts. Franklin K. Lane, now one of the Interstate Commerce Commissioners, was then the City and County Attorney of the municipality. He was, and is, recognized as a man of eminent legal ability, and, while his opinions have not the weight of legal adjudication, they are apparently too sound and too important to be omitted from a work of this character.

To facilitate reference, the pages of articles and chapters are printed in the table of contents. It is thus an easy matter to find the particular section or subdivision to which reference is made, where the page of the article or chapter is known.

It is evident that the organic law of the City and County of San Francisco demands amendment, and it is to be hoped that the many amendments considered by the Board of Supervisors will make the Charter more clear and comprehensive.

San Francisco, September, 1907.

BOARD OF FREEHOLDERS.

Elected December 27, 1897, in pursuance of the provisions of section 8, article XI. of the Constitution of the State of California.

JOSEPH BRITTON, President.

JEROME A. ANDERSON.
JAMES BUTLER.
H. N. CLEMENT.
A. COMTE, JR.
ALFRED CRIDGE.
L. R. ELLERT.
ISIDOR GUTTE.
P. H. McCARTHY.
JOHN NIGHTINGALE, JR.
JOHN C. NOBMANN.
JOSEPH O'CONNOR.
LIPPMANN SACHS.
EDWARD R. TAYLOR.
A. W. THOMPSON.

J. RICH'D FREUD, Secretary.
MISS CLARA STOCKTON, Assistant Secretary.

COMMITTEES.

Boundary, Rights, and Liabilities: Nobmann, Thompson, and McCarthy.

Legislative Department: Ellert, Anderson, Taylor, and Cridge.

Finance, Revenue, and Taxation: Sachs, Ellert, and Comte.

Executive Department: Comte, Ellert, and Nightingale.

Judicial Department: Clement, Comte, and Taylor.

Department of Public Works: Taylor, Ellert, and Gutte.

Public Schools and Libraries: O'Connor, Nightingale, McCarthy, and Comte.

Police and Correction: Britton, Sachs, Nobmann, and Butler.

Fire Department: Gutte, Clement, and McCarthy.

Health Department: Anderson, Nightingale, and Taylor.

Department of Elections: Butler, Nobmann, and Thompson.

Public Utilities: Cridge, Anderson, and Britton.

Civil Service and Salaries: McCarthy, Clement, and Gutte.

Miscellaneous and Schedule: Nightingale, Taylor, and Comte.

Revision: Thompson. Taylor, O'Connor, Cridge, and Anderson.

CONTENTS.

Pages
ARTICLE I. Boundaries, Rights, and Liabilities 9- 12
ARTICLE II. Legislative Department 13- 61
  Chapter I. The Board of Supervisors 13- 27
  II. Powers of the Supervisors 27- 53
  III. Contracts 53- 61
ARTICLE III. Finance and Taxation 62- 83
  Chapter I. Levying of Taxes 62- 69
  II. The Several Funds 69- 74
  III. The Custody of Public Moneys 74- 81
  IV. Payment of Claims 82- 83
ARTICLE IV. Executive Department 84-107
  Chapter I. The Mayor 84- 87
  II. The Auditor 87- 91
  III. The Treasurer 91- 96
  IV. The Assessor 96-102
  V. The Tax Collector 102-105
  VI. The Coroner 105-106
  VII. The Recorder 106-107
ARTICLE V. Legal Department 108-130
  Chapter I. The Superior Court Judges 108-109
  II. The City Attorney 109-112
  III. The District Attorney 112-114
  IV. The Public Administrator 115
  V. The County Clerk 115-116
  VI. The Sheriff 117-118
  VII. The Justices' Court 118-119
  VIII. The Police Court 119-129
  IX. The San Francisco Law Library 129-130
ARTICLE VI. Department of Public Works 131-229
  Chapter I. The Board of Public Works 131-154
  II. Improvement of Streets 155-210
  III. Opening, etc., of Streets 211-225
  IV. Sewers and Drainage 225-228
  V. Harbors and Wharves 228-229
ARTICLE VII. Public Schools and Libraries 230-251
  Chapter I. The Board of Education 230-231
  II. Schools 231-232
  III. Powers of the Board of Education 232-240
  IV. Superintendent of Schools 240-244
  V. School Tax Levy 244-245
  VI. School Houses and Lots 246-248
  VII. Public Library and Reading Rooms 248-251

Pages
ARTICLE VIII. Police Department 252-272
Chapter I. Organization 252
II. Police Commissioners 253-254
III. Powers of the Board................254-256
IV. The Chief of Police.................256-259
V. Subordinate Officers 259-260
VI. Police Officers 260-261
VII. Promotions, Suspensions, etc.........261-263
VIII. Unclaimed and Stolen Property......263-265
IX. Present Police Force................ 265
X. Police Relief and Pension Fund......266-272
ARTICLE IX. Fire Department 273-289
Chapter I. Organization and Powers............273-276
II. Duties of the Commissioners.........276-278
III. The Chief Engineer.................279-280
IV. Fire Companies 280
V. Fire Marshal 280-282
VI. Fire Wardens 282
VII. Firemen's Relief Fund...............282-286
VIII. Salaries 287
IX. Department of Electricity...........287-289
ARTICLE X. Department of Public Health...............290-295
ARTICLE XI. Department of Elections...................296-300
Chapter I. Board of Election Commissioners.....296-299
II. Municipal Elections 299-300
ARTICLE XII. Acquisition of Public Utilities............301-314
XIII. Civil Service 315-323
XIV. Park Commissioners 324-330
XV. Bonds of Officials........................331-334
XVI. Miscellaneous 335-352
SCHEDULE 353-354
APPROVAL OF CHARTER.................................355-357
APPROVAL OF AMENDMENTS TO CHARTER.............358-363
THE CHARTER AS A WHOLE—PARAMOUNT LAW.......364-367
TABLE OF CASES CITED................................369-384
CITATIONS OF THE CONSTITUTIONS.................. 385
CITATIONS OF THE CODES..............................386-388
Kerr's Cyc. Pol. Code..................................386-387
Kerr's Cyc. Penal Code............................. 387
Kerr's Cyc. Code Civ. Proc.......................... 387
Kerr's Cyc. Civ. Code................................ 388
Code Amendments...................................... 388
CITATIONS OF STATUTES..............................389-390
Henning's General Laws............................. 389
Statutes 389-390
Miscellaneous 390
INDEX 391-464

CHARTER

OF THE

CITY AND COUNTY OF SAN FRANCISCO.

ARTICLE I.

BOUNDARIES, RIGHTS AND LIABILITIES.

Sec. 1. Name and powers of City and County.

Section 1. The municipal corporation known as the City and County of San Francisco shall remain and continue a body politic and corporate, in name and in fact, by the name of the City and County of San Francisco, and by that name shall have perpetual succession; may sue and defend in all courts and places and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold and enjoy real and personal property; receive bequests, gifts and donations of all kinds of property, in fee simple, or in trust for charitable and other purposes, and do all acts necessary to carry out the purposes of such gifts, bequests and donations, with power to manage, sell, lease or otherwise dispose of the same in accordance with the terms of the gift, bequest or trust.

References. As to purchase of land of more than fifty thousand dollars in value, see Charter, post, art. II, chap. I, sec. 21. That execution of trusts is confided to Board of Supervisors, see Charter, post, art. II, chap. II, sec. 1, subd. 30. As to seal of City and County, see Charter, post, art. II, chap. II, sec. 1, subd. 23. Who may take by will: See **Kerr's Cyc. Civ. Code,** § 1275 and notes.

Execution of trusts. As the City and County has power, under this section, to execute trusts, and as the Board of Supervisors is given charge thereof (see art. II, chap. II, sec. 1, subd. 30), such Board has both authority and discretion with respect to the leasing of property which is held by the City and County, in trust, for a specific charitable use under Congressional grant: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 547.

Gift. The city may accept a gift from a telephone company of an option upon its franchise, plant, etc.: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 509.

Sec. 2. Boundaries.

Sec. 2. The boundaries of the City and County of San Francisco are hereby declared to be those set forth in Section Thirty-Nine Hundred and Fifty of the Political Code of California.

References. As to the boundaries of San Francisco, see Consolidation Act, Stats. 1856, art. I, sec. 1, p. 145; Kahn v. Sutro, 114 Cal. 316, 325; 46 Pac. Rep. 316; **Kerr's Cyc. Pol. Code,** §§ 3950, 3953 and notes. Compare Amdt. of March 30, 1874, Code Amdts., 1873-74, pp. 168-170.

Sec. 3. Rights.

Sec. 3. The City and County of San Francisco shall continue, under this Charter, to have, hold and enjoy all property, rights of property, rights of action of every nature and description of the existing municipality and is hereby declared to be the successor of the same.

Change in form of government, effect of. The City and County of San Francisco, as it is to-day, is the same body politic that it was before the Charter came into effect. There has been a change in the form of municipal government, but such change does not take from the municipality any right of property or of action heretofore enjoyed, nor does it relieve the City and County of any obligations heretofore incurred; and, while there is no express provision in the Charter under which the City and County assumes liabilities heretofore existing against the City and County, such liability arises by virtue of the provisions of the Federal and State constitutions inhibiting the passing of any law impairing the obligation of contracts. And this provision binds municipal corporations, as well as individuals: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 161, 162.

Sec. 4. Actions by or against the City and County.

Sec. 4. Suits, actions and proceedings may be brought in the name of the City and County for the recovery of any property, money or thing belonging thereto, in law or equity, or dedicated to public use therein, or for the enforcement of any rights of, or contracts with, the City and

County, whether made or arising or accruing before or after the adoption of this Charter. All existing suits, actions and proceedings in the courts or elsewhere, to which the City and County is a party, shall continue to be carried on by or against the City and County.

References. Duty of City Attorney to prosecute and defend all actions for or against the City and County: See Charter, post, art. V, chap. II, sec. 2.

Liability for cost of advertising. The City and County of San Francisco cannot be relieved of its liability to pay the cost of certain advertising by a note inserted in the advertisements to the effect that other parties will be required to pay for such advertising: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 598.

Liability for precedent obligations. The adoption of the new organic law by the municipality, such as the Charter, did not effect the annulment of contracts. Obligations created prior to the Charter must be met: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 161.

Sec. 5. Liabilities for defects in sidewalks, streets, or sewers.

Sec. 5. No recourse shall be had against the City and County for damage or loss to person or property suffered or sustained by reason of the defective condition of any sidewalk, street, avenue, lane, alley, court or place, or by reason of the defective condition of any sewer, or by reason of any defective drainage, whether any of said defects originally existed, or whether they were occasioned by construction, excavation or embankment; nor shall there be any recourse against the City and County for want of repair of any sidewalk, street, avenue, lane, alley, court or place, or by want of repair of any sewer; nor shall there be any recourse against the City and County for damage to person or property suffered or sustained by reason of accident on any sidewalk, street, avenue, lane, alley, court or place, or by falling from any embankment thereon or into any excavation therein; but in any such case the person or persons on whom the law may have imposed the obligation to repair such defect in the sidewalk, street or public highway, or in the sewer, and also the officer or officers through whose official negligence such defect remains unrepaired shall be jointly and severally liable to the party injured for the damage sustained.

Liability for negligence of officers. It is the settled law of this State that, in the absence of a statutory provision imposing a liability, a municipal corporation is not liable for personal injuries to individuals occasioned through the neglect of the officers of the corporation to properly perform their duties: Chope v. City of Eureka, 78 Cal. 588, 590; 21 Pac. Rep. 364; Arnold v. San Jose, 81 Cal. 618; 22 Pac. Rep. 877; Sievers v. San Francisco, 115 Cal. 648, 655; 47 Pac Rep. 687.

Liability. Claims of State hospitals against the City and County of San Francisco for the support of criminal insane persons committed from this City and County, if not barred by the statute of limitations, are probably binding upon the City and County: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 497; see **Kerr's Cyc. Penal Code,** §§ 1367-1373 and notes.

ARTICLE II.

LEGISLATIVE DEPARTMENT.

CHAPTER I.

The Board of Supervisors.

Sec. 1. Legislative power.

Section 1. The legislative power of the City and County of San Francisco shall be vested in a legislative body, which shall be designated the Board of Supervisors. Such body is also designated in this Charter, the Supervisors.

Legislative authority, how vested. Under this section, the "legislative authority" of the City and County of San Francisco is vested in the Board of Supervisors: Harrison v. Roberts, 145 Cal. 174, 180; 78 Pac. Rep. 537.

Mayor is not part of legislative department. It is true that the Mayor, by virtue of his right of veto in certain cases, has some of the law-making power of the municipality; but the Charter of the City does not make him a part of the "legislative department," in the sense that no independent power is or can be given to the latter: Harrison v. Roberts, 145 Cal. 173, 180; 78 Pac. Rep. 537.

Sec. 2. Eighteen supervisors; term; qualifications; salary. Ex-Mayors.

Sec. 2. The Board of Supervisors shall consist of eighteen members, all of whom shall hold office for two years and be elected from the City and County at large. Each one must be at the time of his election an elector of the City and County, and must have been such for at least five years next preceding his election. Each Supervisor shall receive an annual salary of twelve hundred dollars.

Every person who has served as Mayor of the City and County, so long as he remains a resident thereof, shall be entitled to a seat in the Board of Supervisors and to participate in its debates, but shall not be entitled to a vote nor to any compensation.

Sec. 3. Quorum.

Sec. 3. A majority of all the members of the Board shall constitute a quorum, but a less number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as the Board may prescribe.

References. That bill must be passed by a majority of the members, see infra, sec. 9.

Power to compel attendance of absent members. The language of this section is permissive, rather than mandatory. If a quorum does not appear at a regular Monday meeting, the Board is not required to meet from day to day and compel attendance; but if the minority desires to adjourn to the next regular meeting-day and compel absent members to appear, it has such power: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 350.

Sec. 4. (1) Appointments by the Board. (2) Rules. (3) Journal. (4) Decorum.

Sec. 4. The Board shall:

Appointments by the Board.

1. Appoint a clerk, sergeant-at-arms and, when authorized to do so by ordinance, such additional clerks and other assistants as may be deemed necessary.

Rules.

2. Establish rules for its proceedings.

Journal.

3. Keep a journal of its proceedings, and allow the same to be published. The ayes and noes shall on demand of any member be taken and entered therein.

Decorum.

4. Have authority to punish its members for disorderly or contemptuous behavior in its presence.

Sec. 5. Presiding officer.

Sec. 5. The Mayor shall be the presiding officer of the Board of Supervisors. In the absence of the Mayor the Board shall appoint a presiding officer pro tempore from its own members, who shall have the same right to vote as other members.

References. Power of Mayor as president of Board of Supervisors: See Charter, post, art. IV, chap. I, sec. 5.

Legislative authority of Mayor. The provision in this section, that the Mayor shall be the presiding officer of the Board of Supersors, confers upon him no more "legislative authority" than is given to the Lieutenant-Governor by being president of the Senate: Harrison v. Roberts, 145 Cal. 173, 180; 78 Pac. Rep. 537.

Sec. 6. Meetings, time and place.

Sec. 6. The Board shall meet on Monday of each week, or if that day be a legal holiday, then on the next day. The Board shall not adjourn to any other place than to its regular place of meeting, except in case of great necessity or emergency. The meetings of the Board shall be public.

Sec. 7. Clerk of the Board; duties and powers.

Sec. 7. The Clerk of the Board, when requested to do so, shall administer oaths and affirmations, without charge, in all matters pertaining to the affairs of his office, and shall perform such services as may be prescribed by the Board. He shall have the custody of the seal, and of all leases, grants and other documents, records and papers of the City and County. His signature shall be necessary to all leases, grants and conveyances of the City and County.

Sec. 8. Ordinances; enactment and passage.

Sec. 8. Every legislative act of the City and County shall be by ordinance. The enacting clause of every ordinance shall be in these words: "Be it ordained by the People of the City and County of San Francisco as follows." No ordinance shall be passed except by bill, and no bill shall be so amended as to change its original purpose.

Legislation must comply with this section. The manner in which the present Board of Supervisors legislates is different from that formerly obtaining in this City and County. The provisions of this section are new; and it would appear that no legislation by this Board could be valid which does not, ab initio, conform to these requirements: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 148, 150.

Sec. 9. Bills and resolutions; final adoption.

Sec. 9. No bill shall become an ordinance, nor resolution be adopted, unless finally passed by a majority of all the members of the Board and the vote be taken by ayes and noes and the names of the members voting for and against the same be entered in the Journal.

Charter to be followed in taking vote on final passage. The method which the Charter requires should be followed by the Board of Supervisors in taking a vote on the final passage of an ordinance or resolution. A majority of all the members elected to the Board of Supervisors must concur in the passage of a bill or resolution, and the vote must be taken by ayes and noes. This procedure is indispensable to the valid passage or adoption of any ordinance or resolution. The directions of the Charter cannot be dispensed with by the Board: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 147.

Vote necessary to amend pending bill. The Charter is silent as to the vote required upon any preliminary step in the passing of a bill. The Board of Supervisors may not finally pass a bill without the consent of a majority of the full membership of the Board, but this does not expressly, or by implication, necessitate the consent of a majority of the full membership to amend a pending bill. It is, without doubt, within the power of the Board to make a rule that all amendments to pending bills shall require an affirmative vote of a majority of the members of the Board before such amendment can be declared adopted; but there seems to be nothing in the Charter which makes such a vote necessary upon any vote, other than that upon the final passage of a resolution or bill: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 402, 403.

Sec. 10. Revision and amendment.

Sec. 10. No ordinance shall be revised, re-enacted or amended by reference to its title; but the ordinance to be revised or re-enacted, or the section thereof amended, shall be re-enacted at length as revised and amended.

References. As to sufficiency of titles to amendatory statutes, see extended note to 79 Am. St. Rep. 480, 481.

Sec. 11. Subject and title.

Sec. 11. An ordinance shall embrace but one subject, which subject shall be expressed in its title. If any subject be embraced in an ordinance and not expressed in its title, such ordinance shall be void only as to so much thereof as is not expressed in its title.

References. As to when title of statute embraces but one subject, and what may be included thereunder, see extended notes to 64 Am. St. Rep. 70-106, and 79 Am. St. Rep. 456-486.

Construction of section. This provision of the Charter was taken verbatim from sec. 24, art. IV, of the present Constitution of this

State, which, in turn, was adopted from sec. 24, art. IV, of the Constitution of 1849. Under the older Constitution, this provision was uniformly held to be directory merely, and persuasive only to the minds and consciences of the legislators. But, when the Constitution of 1879 became the organic law of the State, it contained a section not found in the earlier one, now sec. 22 of art. I. This provision declares that "the provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." Under the compulsion of this section alone, the Supreme Court, in Ex parte Liddell, 93 Cal. 633, 636; 29 Pac. Rep. 251, declared the provision to be mandatory. There is, however, no mandate in the Charter corresponding to that of the Constitution of this State, and, in accordance with the uniform construction of such provisions, a court would probably regard the section as directory, merely, to the legislative body alone, and not a subject of judicial cognizance: Law v. San Francisco, 144 Cal. 384, 387; 77 Pac. Rep. 1014. The provision of the Constitution, art. IV, sec. 24, that every act shall embrace but one subject, which subject shall be expressed in its title, is not made applicable, in terms, to municipal corporations, and was evidently not intended so to apply: Ex parte Haskell, 112 Cal. 412, 421; 44 Pac. Rep. 725.

Sec. 12. Reconsideration. Franchises; passage and renewal.

Sec. 12. When a bill is put upon its final passage in the Board and fails to pass, and a motion is made to reconsider, the vote upon such motion shall not be acted upon before the expiration of twenty-four hours after adjournment. No bill for the grant of any franchise shall be put upon its final passage within ninety days after its introduction, and no franchise shall be renewed before one year prior to its expiration. Every ordinance shall, after amendment, be laid over for one week before its final passage.

Final passage of bill, etc. It is not necessary that a bill shall be "passed to print" upon its introduction. It may be passed to print at one meeting and finally passed at the next meeting. All that the Charter requires (see next section, infra) is, that it shall be printed for five days before final action. But it must be before the Board as a bill for ninety days prior to its final passage: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 437, 438.

Sec. 13. Advertisement of bills and resolutions. Exception.

Sec. 13. Every bill or resolution providing for any specific improvement, or the granting of any franchise or privilege, or involving the lease, appropriation or disposition of public property, or the expenditure of public money, except sums less than two hundred dollars, or levying any tax or assessment, and every ordinance providing for the imposition of a new duty or penalty, shall, after its introduction, be published in the official newspaper, with the ayes and noes, for at least five successive days (Sundays and legal holidays excepted) before final action upon the same. If such bill be amended, the bill as amended shall be advertised for a like period before final action thereon. But in cases of great necessity the officers and heads of departments may, with the consent of the Mayor, expend such sums of money, not to exceed two hundred dollars, as shall be necessary to meet the requirements of such necessity.

Conflict between sections 13 and 19. There is a conflict between section 13 and section 19, infra, which is evidently the result of inadvertence, possibly arising from a clerical error. This section requires the publication of all resolutions or bills "involving the expenditure of public money, except sums less than two hundred dollars," whereas section 19, infra, requires the publication of all resolutions "directing the payment of money other than salaries or wages, when the amount exceeds five hundred dollars." The language of section 13 is in greater part that of the Consolidation Act (Stats. 1856, p. 163, sec. 68), in which the amount was five hundred dollars. The rule that the later provision (sec. 19) should govern might well be invoked and applied here: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 214, 216.

Publication. Ordinances accepting streets are not required to be published before final passage, or subsequent to final passage: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 213.

Publication of an ordinance requires that the whole of it be published, not a part of it. Hence, a publication which omits the enacting clause, not being a publication of the whole ordinance, is not the publication required by law: People v. Russell, 74 Cal. 578, 579; 16 Pac. Rep. 395.

Sec. 14. Veto of separate items by the Mayor.

Sec. 14. If any bill be presented to the Mayor containing several items appropriating money or fixing a tax levy, he may object to one or more items separately, while approving other portions of the bill. In such case he shall append to the bill at the time of signing it a statement of the item or items to which he objects and the reasons therefor, and the item or items so objected to shall not take effect unless passed notwithstanding the Mayor's objection. Each item so objected to shall be separately reconsidered by the Board in the same manner as bills which have been disapproved by the Mayor.

Sec. 15. When ordinances take effect.

Sec. 15. No ordinance shall take effect until ten days after its passage unless otherwise provided in such ordinance.

Sec. 16. Submission of bills to the Mayor. Passage of bills over Mayor's veto.

Sec. 16. Every bill and every resolution as hereinbefore provided, which shall have passed the Board and shall have been duly authenticated, shall be presented to the Mayor for his approval. The Mayor shall return such bill or resolution to the Board within ten days after receiving it. If he approve it he shall sign it and it shall then become an ordinance. If he disapprove it he shall specify his objections thereto in writing. If he does not return it with such disapproval within the time above specified, it shall take effect as if he had approved it. The objections of the Mayor shall be entered at large in the Journal of the Board, and the Board shall, after five and within thirty days after such bill or resolution shall have been so returned, reconsider and vote upon the same. If the same shall, upon reconsideration, be again passed by the affirmative vote of not less than fourteen members of the Board, the presiding officer shall certify that fact on the bill or resolution, and when so certified, the bill shall become an ordinance with like effect as if it had been approved by the Mayor. If the bill or resolution shall fail to receive the vote of fourteen members of the Board it shall be deemed finally lost. The vote on such reconsideration shall be taken by ayes and noes and the names of the members voting for and against the same shall be entered in the Journal.

Construction of section. It seems to have been the intention of the Freeholders that the Mayor should have the power to veto or approve all bills or resolutions which may become ordinances, it being said in section 16 that "if the Mayor shall sign such bill or resolution, it shall then become an ordinance." Whenever the Board of Supervisors performs a legislative act, its action is subject to the approval of the Mayor. This would include ordinances fixing the tax levy (sec. 13, chap. I, art. II), and ordinances fixing gas, electric-light, water, and other rates (subd. 14, sec. 1, chap. II, art. II), it being required in the last-named provision that such rates shall be fixed by ordinance: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 214, 215.

Provision of section, how limited. The requirement of this section, that certain bills and resolutions which shall have been passed by the Board of Supervisors shall be presented to the Mayor for his approval, gives him a qualified veto upon the action of the Board, but does not make him a constituent part of the "legislative authority" of the City and County. The provision in this section is, moreover, limited to the bills and resolutions "hereinbefore provided," and does not include proposals for amendments to the Charter. It is not therefore necessary that such proposals should be concurred in by the Mayor, or presented to him for approval: Harrison v. Roberts, 145 Cal. 173, 180; 78 Pac. Rep. 537.

Ordinance fixing water-rates need not be presented for approval. The constitutional provision for the fixing of water-rates by the Board of Supervisors or other governing body of the City and County of San Francisco did not require the ordinance fixing such rates to be presented to the Mayor of San Francisco for his approval: Jacobs v. Board of Supervisors, 100 Cal. 121, 126, 132; 34 Pac. Rep. 630.

Mayor's disapproval, when final. The provision in this section, that "the objections of the Mayor shall be extended at large in the journal of the Board, and the Board shall, after five and within thirty days after such bill or resolution shall have been so returned, reconsider and vote upon the same," has no bearing upon or relevancy to demands made upon the Urgent Necessity Fund, mentioned in sec. 8, chap. I, art. III. As to these demands, the Mayor's disapproval is final; or, more correctly, no legal demand exists against said appropriation, and no money can be paid out of the same unless the Mayor joins with five-sixths of the members of the Board of Supervisors in ordering such payment. The Mayor alone cannot draw upon such appropriation, nor can the Board, even by unanimous vote, do so alone: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 369.

Sec. 17. Deposit of all ordinances.

Sec. 17. All ordinances and resolutions shall be deposited with the Clerk of the Board who shall record the same at length in a suitable book.

Sec. 18. Repeal of ordinances.

Sec. 18. No ordinance shall be repealed except by ordinance adopted in the manner hereinbefore set out, and such ordinance shall be presented to the Mayor for his approval as hereinbefore provided.

Sec. 19. Demands for payment of money.

Sec. 19. Except as provided in Chapter III of Article III of this Charter, all demands payable out of the treasury must, before they can be approved by the Auditor or paid by the Treasurer, be first approved by the Board of Supervisors. All demands for more than two hundred dollars shall be presented to the Mayor for his approval, in the manner hereinbefore provided for the passage of bills or resolutions. All resolutions directing the payment of money other than salaries or wages, when the amount exceeds five hundred dollars, shall be published for five successive days (Sundays and legal holidays excepted) in the official newspaper.

References. As to presentment of claims for damages against the City and County, see Charter, post, art. II, chap. II, sec. 8. As to payment of claims in general, see Charter, post, art. III, chap. IV, sec. 1. As to consideration of claim against county, see **Kerr's Cyc. Pol. Code,** § 4072.

Injunction. Supervisors are trustees of funds under their control for certain specified purposes, and cannot be enjoined from examining, auditing, or allowing certain claims on the ground that they may be improperly allowed: Merriam v. Board of Supervisors, 72 Cal. 517, 519; 14 Pac. Rep. 137.

Supervisors' order need not specify the fund on which the order is to be drawn. The Auditor is sufficiently informed on what fund to draw, when the order of the Board specifies the liability for which it is to be drawn: Babcock v. Goodrich, 47 Cal. 488, 509. Nor need it specify the items of account: Sehorn v. Williams, 110 Cal. 621; 43 Pac. Rep. 8.

Demands of all departments, approval of. The exceptions found in art. III, chap. III, sec. 13, are as to certain salaries, and the demands of the Board of Education. With these exceptions, the demands of all departments should be approved by the Board of Supervisors, notwithstanding other provisions as to the control of funds. The theory of the Charter in this regard appears to be that the Board of Supervisors shall have a double check upon the expenditures of the departments: 1. By limiting the amount appropriated to each department at the beginning of the fiscal year, which appropriation constitutes a distinct fund for the uses and purposes of the department; and 2. By requiring the approval of the Board of Supervisors upon the great body of demands of such departments: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 200, 201.

Demands of Police Court interpreters, approval of. The Judges of the Police Courts, prior to the taking effect of the Charter, had no power to create obligations against the City and County treasury by calling upon persons to render services as interpreters of foreign languages; and no obligation against the County treasury was thereby created. Hence, no demands for services rendered by interpreters of foreign languages in the Police Courts should be approved, unless such demands are in compliance with the provisions of the Charter, such provisions being exclusive: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 210.

Duty of approving demands is ministerial. The duty imposed upon the Board of Supervisors of approving all demands upon the funds set aside for departments which are given exclusive control over their appropriations is of purely ministerial character, except in so far as it acts as a check upon such departments against the expenditure of more than its appropriation permits, or protects the City and County against expenditures of an unlawful character. The Board of Supervisors, at the beginning of each fiscal year, must set aside appropriations for the departments named, and at such time may, by the appropriations so made, limit and control the expenditure of such departments for such fiscal year. But, after such appropriation has been made, responsibility for its expenditure rests entirely on the department to which it is allotted. The legislative department provides the funds, the administrative departments expend them, and each is to be held responsible within its own province. The administrative departments are made responsible for the manner in which the moneys so appropriated are used: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 180, 182.

Publication. Urgent Necessity Fund. The publication of resolutions calling for the expenditure of more than five hundred dollars out of the Urgent Necessity Fund ought not to be neglected, it being plain that care was taken in the Charter to provide precaution and checks against any hasty and unadvised use of the money: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 414, 416. As to appropriation and payment for "urgent necessities," see Charter, post, art. III, chap. I, sec. 8.

What, only, need be published. Only those bills, resolutions, and ordinances which the Charter requires to be published need be published, in the absence of any rule or ordinance requiring otherwise: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 214, 216.

Sec. 20. Petition to submit ordinance to vote. Signatures to petition. Tickets in election. Adoption by vote of people makes ordinance valid; repeal or amendments of same.

Sec. 20. Whenever there shall be presented to the Board of Election Commissioners a petition signed by a number of voters equal to fifteen per centum of the votes cast at the last preceding State or City and County election, asking that an ordinance to be set forth in such petition, be submitted to a vote of the electors of the City and County, the Board of Election Commissioners must submit such proposed ordinance to the vote of the electors at the next election.

The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths, that the statements therein made are true, and that each signature to the paper appended is the genuine signature of the person whose name purports to be thereto subscribed.

The tickets used in such election shall contain the words ''FOR THE ORDINANCE'' (stating the nature of the proposed ordinance) and ''AGAINST THE ORDINANCE'' (stating the nature of the proposed ordinance).

If a majority of the votes cast upon such ordinance shall be in favor of the adoption thereof, the Board of Election Commissioners shall, within thirty days from the time of such election, proclaim such fact; and upon such proclamation such ordinance shall have the same force and effect as an ordinance passed by the Supervisors and approved by the Mayor, and the same shall not be repealed by the Supervisors. But the Supervisors may submit a proposition for the repeal of such ordinance, or for amendments thereto, for vote at any succeeding election; and should such proposition, so submitted, receive a majority of the votes cast thereon at such election, such ordinance shall be repealed or amended accordingly.

Sec. 21. What ordinances must be voted upon. Tickets in election. Validity of ordinance so adopted. When void.

Sec. 21. Except as otherwise provided in the Constitution of the State, or as otherwise provided in this Charter, every ordinance involving the granting by the City and County of any franchise for the supply of light or water, or for the lease or sale of any public utility, or for the purchase of land of more than fifty thousand dollars in value, must be submitted to the vote of the electors of the City and County at the election next ensuing after the adoption of such ordinance.

The tickets used at such election shall contain the words ''FOR THE ORDINANCE'' (stating the nature of the proposed ordinance) and "AGAINST THE ORDINANCE" (stating the nature of the proposed ordinance).

If a majority of the votes cast upon such ordinance shall be in favor of the adoption thereof, the Board of Election Commissioners shall, within thirty days from the time of such election, proclaim such fact; and upon such proclamation such ordinance shall have the same force and effect as an ordinance passed by the Supervisors and approved by the Mayor.

No such franchise, or lease or sale of any public utility, or purchase of land, shall be of any force or effect except it be made by ordinance, and such ordinance be adopted by the people as in this section provided.

References. As to referendum, see Charter, post, chap. XII, secs. 3 and 7. That there is a wide diversity of opinion as to what questions the legislature may, and what it may not, submit to the arbitrament of the people, see People v. McFadden, 81 Cal. 489, 493; 22 Pac. Rep. 851. As to what classes of legislation may be submitted to the people, see 6 Am. and Eng. Ency. of Law, 2d ed., p. 1021.

Definition of "purchase." The word "purchase" is used in the Charter in its ordinary sense, as distinguished from its technical sense. We find, for instance, in the grant of powers to the Board of Supervisors (art. II, chap. II, sec. 1, subd. 12), that the Board is given power to "purchase or acquire by condemnation such property as may be needed for public use." Here the word "purchase" manifestly does not include all methods of acquisition, except descent, which is the strictly legal definition, for both purchase and condemnation are mentioned. As used in sec. 21, chap. I, art. II, of the Charter, the word "purchase" does not include condemnation: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 506, 507.

Limitation upon acquisition of land. The Board of Supervisors may not by bargain and sale purchase land over fifty thousand dollars in value. It may acquire, by condemnation proceedings, any amount of land that it can legally pay for without submitting to the people the question of purchase. But, as a safeguard against the Board's paying more than property is worth, if any property worth more than fifty thousand dollars is desired, the question of acquisition must be referred to the people, either upon the ordinance directing purchase, or upon the issuance of bonds as otherwise provided for in the Charter. The "dollar limit" is a protection against the acquisition of any extended tracts of land, even under condemnation proceedings. But, when there are no such legal proceedings, the Charter will not permit the expenditure of more than fifty thousand dollars without the direct approval and consent of the electors: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 506, 507.

Purchase of land. Ordinance. If it is sought to purchase land, worth more than fifty thousand dollars, out of the tax levy, it is necessary to submit the ordinance providing for its purchase to the electors; and a majority of the vote cast upon the ordinance is sufficient to adopt it: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 549.

Sec. 22. Amendments to Charter by petition. Signatures to petition. Special election. Whenever the State Constitution is changed. Tickets in election. Majority shall decide when.

Sec. 22. Whenever there shall be presented to the Supervisors a petition signed by a number of voters equal to fifteen per centum of the votes cast at the last preceding State or municipal election, asking that an amendment or amendments to this Charter, to be set out in such petition, be submitted to the people, the Board must submit to the vote of the electors of the City and County the proposed amendment or amendments.

The signatures to the petition need not all be appended to one paper. Each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements made therein are true and that each signature to such paper appended is the genuine signature of the person whose name purports to be thereto subscribed.

The Board of Election Commissioners must make all necessary provision for submitting the proposed amendment or amendments to the electors at a special election to be called by it, and shall canvass the vote in the same manner as in other cases of election.

All the provisions of the Constitution of the State embracing the subject in this section provided for are hereby expressly made applicable to such proposed amendment or amendments. But if at any time there shall be no constitutional provision or provisions under which this Charter may be amended, then the aforesaid amendment or amendments must be submitted by the Board of Election Commissioners to the vote of the electors of the City and County at the election which next ensues after such petition is filed with the Supervisors, if any such election is not to be held within sixty days after the filing of such petition.

The tickets used at such election shall contain the words "FOR THE AMENDMENT" (stating the nature of the proposed amendment) and "AGAINST THE AMENDMENT" (stating the nature of the proposed amendment).

If a majority of the votes cast upon such amendment or amendments shall be in favor of the adoption thereof, the Board of Election Commissioners shall, within thirty days from the time of such election, proclaim such fact, and thereupon this Charter shall be amended accordingly.

Amendment of Charter. Sec. 8, art. XI, of the Constitution declares that proposals for amending a ratified freeholders' charter are to be submitted by the "legislative authority of the city": Harrison v. Roberts, 145 Cal. 173, 179; 78 Pac. Rep. 537.

Proposals for the amendment of the Charter should take the form of a bill with an enacting clause: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 284.

Same. Construction of Constitution. The constitutional provision under which a ratified freeholders' charter may be amended, in so far as it declares that the charter "may be amended" only "at intervals of not less than two years," has reference solely to the time of the general or special election at which a proposed amendment is submitted for ratification. Hence, if a proposed amendment is submitted at a general election to be held within less than two years after a prior special election, at which amendments to the charter were submitted and approved, such submission would be in violation of such constitutional provision, and therefore invalid: Harrison v. Roberts, 145 Cal. 173, 176; 78 Pac. Rep. 537. Where amendments to a municipal charter are petitioned for by fifteen per cent of the qualified voters of the city, the legislative authority of the city, though required to submit the same to the voters thereof, is invested with a full discretion either to order a special election or to wait until the next general election to submit the proposed amendments to a vote of the people: Lubliner v. Alpers, 145 Cal. 291, 292; 78 Pac. Rep. 722.

The Constitution, sec. 8, art. XI, explicitly provides that a ratified freeholders' charter may be "amended" only at intervals of not less than two years; and it is essential to any amendment that a proposition therefor be submitted to the qualified electors of the municipality at a general or special election, and that such proposition be "ratified" by a majority of the electors voting thereon. This proposal must emanate from the "legislative authority" of the municipality, and, by reason of another provision of the Constitution, such legislative authority must submit to the qualified electors any proposed amendments petitioned for by fifteen per cent "of the qualified voters of the city." Amendments "ratified" by the electors, like the original Charter, may be "approved" or rejected as a whole by the legislature of the State, which body, however, has no power of alteration or amendment thereof. Such approval may be made by concurrent resolution, and the amendments take effect only upon such approval being given: Harrison v. Roberts, 145 Cal. 173, 175; 78 Pac. Rep. 537. An exclusive mode of amending freeholders' charters is prescribed by the Constitution; all others are prohibited: Blanchard v. Hartwell, 131 Cal. 263; 63 Pac. Rep. 349. A charter is not adopted merely because it received a majority of the votes cast on the question of adoption, if it did not receive a majority of all the votes cast at the election: City of Santa Rosa v. Bower, 142 Cal. 299; 75 Pac. Rep. 829.

CHAPTER II.

Powers of the Supervisors.

Sec. 1. (1) Local laws. (2) Use of streets. (3) Railways on streets. (4) Street-sweepings. (5) Fire limits. (6) Nuisances. (7) Passenger vehicles. (8) Public pound. (9) Morgue. (10) Places for detention. (11) Prisons, hospitals, and almshouses. (12) To acquire property. (13) Water, heat, light, power, etc. (14) Rates for water, heat, light, and power. (15) License taxes; exemption. (16) Fines and penalties. (17) Fees. (18) Fourth of July; Memorial Day. (19) Cruelty to animals. (20) Interpreters' compensation. (21) Rewards to catch criminals. (22) Sewer system fund. (23) Official seals. (24) Hours and wages of laborers. (25) Boulevards. (26) Tunnels. (27) Regulation of street-railways; power to fix fares and freights. (28) Entry into the city of steam-railroads; conditions of such privilege. (29) Conveyance of lands. (30) Trusts. (31) Vacant lots. (32) Lease of lands of the city. (33) Sale of useless property. (34) Purchase of property. (35) Mayor's contingent fund. (36) Relief of exempt volunteer firemen.

Section 1. Subject to the provisions, limitations and restrictions in this Charter contained, the Board of Supervisors shall have power:

Local laws.

1. To ordain, make and enforce within the limits of the City and County all necessary local, police, sanitary and other laws and regulations.

References. For chapter, concerning boards of supervisors, which does not apply to the City and County of San Francisco, see **Kerr's Cyc. Pol. Code,** §§ 4022-4087. Power of Supervisors to grant franchises or privileges: See Charter, post, secs. 5-7 of this article and chapter. That the term "other regulations" is limited to objects similar to those denominated police and sanitary, see Ex parte Hodges, 87 Cal. 162, 165; 25 Pac. Rep. 277.

Construction of provision. This provision does not authorize the passage of any regulations in conflict with general laws: Ex parte Roach, 104 Cal. 272; 37 Pac. Rep. 1044; nor does it authorize the passage of ordinances having any extraterritorial force: South Pasadena v. Terminal Ry. Co., 109 Cal. 315, 321; 41 Pac. Rep. 1093.

Same. Effect of word "necessary." All legislative power of the City and County is, by this section, vested in the Board of Supervisors. By virtue of this clause the constitutional grant of police powers of the State to the City and County goes directly to and vests in the Board, which thereby becomes possessed of the right to exercise within the city limits the entire police power of the State, subject only to control of general laws. The insertion of the word "necessary," in this section, does not limit or restrict the power given to the city by the Constitution. The City Charter, in municipal affairs, is paramount to general laws, but it cannot be superior to the Constitution itself, and nothing contained in such Charter can, in any way, affect a grant of power conferred by the Constitution: Odd Fellows Cem. As. v. San Francisco, 140 Cal. 226, 230; 73 Pac. Rep. 987.

POWERS IN GENERAL.

Limited powers. Boards of supervisors are bodies of limited jurisdiction, and have only such powers as are conferred upon them by their charters, the statutes, and the Constitution of the State: Von Schmidt v. Widber, 105 Cal. 151, 159; 38 Pac. Rep. 682; Ex parte Roach, 104 Cal. 272, 274; 37 Pac. Rep. 1044; County of Modoc v. Spencer, 103 Cal. 498, 499; 37 Pac. Rep. 483. The Board of Supervisors of the City and County of San Francisco can exercise the following powers, and no others: 1. Those granted in express words; 2. Those necessarily or fairly implied or incident to the powers expressly granted; 3. Those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable: Von Schmidt v. Widber, 105 Cal. 151, 157; 38 Pac. Rep. 682. But any ordinance passed by a municipal corporation, within the scope of the authority expressly conferred upon it, has the same force, within the corporate limits, as a statute passed by the legislature itself has throughout the State: Ex parte Roach, 104 Cal. 272, 274; 37 Pac. Rep. 1044. A municipal ordinance must be consistent with the general powers and purposes of the corporation, must harmonize with the general laws of the State, the municipal charter, and the principles of the common law: South Pasadena v. Terminal Ry. Co., 109 Cal. 315, 321; 41 Pac. Rep. 1093. And municipal ordinances passed under implied power must be reasonable, consonant with the general powers and purposes of the municipality, and not inconsistent with the laws of the State: Ex parte Green, 94 Cal. 387, 390; 29 Pac. Rep. 783.

Power to appoint deputies in Registrar's office. The appointment of deputies in the Registrar's office can be made by the Board of Supervisors only with the consent of the Mayor and fourteen members of the Board, at such salary as the Board may fix: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 552.

Leases to Police Department. Title in fee. All leases for a term of years, as well as the title in fee to all premises used by the Police Department, should stand in the name of the municipal corportion, the City and County of San Francisco: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 494, 495.

Power to refund protested taxes. If a verified claim for protested taxes has been filed therefor within six months after payment, the Board of Supervisors has power to refund the same: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 544. See **Kerr's Cyc. Pol. Code,** § 3804 and notes.

The Board of Supervisors does not have power to refund taxes paid under protest where the provisions of **Kerr's Cyc. Pol. Code,** § 3819, have not been complied with by the taxpayer. It is possible that this section was intended to cover cases of illegal assessment alone, and that section 3804 of the same code was intended to apply to other cases where an illegal collection was made, such as a double collection; but such distinction would render no provision of the law nugatory or idle: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 351, 353.

Power to order certain assessments canceled. The Board of Supervisors has power, under **Kerr's Cyc. Pol. Code,** § 3805, to order canceled certain assessments on real property which, by mistake, has been twice assessed: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 92, 617.

Upon being notified by the Tax Collector of a case of double assessment of the same property, the Board of Supervisors has power to cancel one of said assessments by an entry on the margin of the assessment-book: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 616; see **Kerr's Cyc. Pol. Code,** § 3805.

Power to remit penalties on taxes. The Board of Supervisors has no power to remit penalties upon legal and valid taxes, where such taxes have become delinquent: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 648.

The Board of Supervisors does not have power to rebate interest and penalties upon delinquent taxes for the purpose of raising immediate revenue. The Board cannot rebate penalties upon valid assessments: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 296.

Matters as to which Supervisors have no power. The Board of Supervisors has no authority to approve the demands of sheriffs of other counties for fees and mileage in the service of process, where service here has not been actually made: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 411.

That the Board of Supervisors does not have power to remit fees payable to the clerk of the Justice's Court, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 87.

The Board of Supervisors does not have power to credit the specific appropriation made in the budget for the Fire Department with any moneys derived from the sale of old material belonging to the said department. The budget appropriation is the full amount which can be used by the Fire Department in any given fiscal year: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 582.

The Board of Supervisors does not have power to allow the demands of Japanese interpreters for services rendered in cases before the Insanity Commissioners: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 417.

No general authority to sell city property. The Board of Supervisors has power to convey lands, as prescribed in subdivision 29, infra; and to lease lands upon competitive bids (subd. 32, infra), and to sell personal property (subd. 33, infra); but has no general power to sell real property belonging to the City and County: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 690.

No power to devote cemetery lands to other than public uses. The Board of Supervisors of the City and County of San Francisco has no power to devote the cemetery lands of such City and County to any other than public uses, and cannot, therefore, grant them to a private individual or corporation on condition that the grantee shall construct and maintain such walls or fences, and make such improvements, as may afterwards be designated or required by such Board. The grantee is bound to know that the Supervisors have no such authority. The City and County cannot be bound by the unauthorized acts of its agents: La Societa Italiani etc. v. San Francisco, 131 Cal. 169, 174; 63 Pac. Rep. 174.

VALID ORDINANCES.

General ordinance, what constitutes. An ordinance, to be general, need not cover the entire city, provided there is good reason for the division of the city into districts, and such ordinance is of general application throughout the districts so fixed: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 645, 646.

Power to forbid further burials in city. An ordinance which forbids further burials in the city cemeteries, after a designated date, does not contravene **Kerr's Cyc. Pol. Code,** § 3035, requiring the Health Officer to obtain a certificate of the cause of death, and upon receiving it to issue a permit for the interment, as he is not required to grant a permit for interment in a place prohibited by lawful authority of the city: La Societa Italiani etc. v. San Francisco, 131 Cal. 169, 174; 63 Pac. Rep. 174.

It is a proper exercise of the police power vested in the City and County of San Francisco, by sec. 11, art. XI, of the State Constitution, for the Board of Supervisors of such City and County to prohibit, by ordinance, the interment or burial of the dead body of any person in any cemetery, graveyard, or other place within the City and County of San Francisco, exclusive of those portions thereof belonging to the United States: Odd Fellows' Cem. As. v. San Francisco, 140 Cal. 226, 229; 73 Pac. Rep. 987.

Power to limit height of fences used for advertising purposes. As to the power of the municipal authorities to limit by ordinance the height of fences used for advertising purposes, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 233.

Power to provide compensation for expert witnesses. In the exercise of its general duty to care for and protect the property and rights of the city, the Board of Supervisors has power to provide for the compensation of expert witnesses on behalf of the City and County in excess of witness fees allowed by law: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 202.

Power to prohibit possession of lottery tickets. An ordinance making it a misdemeanor for any person to have a lottery ticket in his possession, and providing punishment for a violation of such prohibition, is valid, though the seller only is culpable under the State law. The design of such an ordinance is to stamp out lotteries and traffic in lottery tickets, and it is clearly within the power and province of the municipality, in its endeavor to eradicate the evil, to hold the purchaser or possessor also culpable: Ex parte McClain, 134 Cal. 110, 112; 66 Pac. Rep. 69. But compare Matter of Wong Hane, 108 Cal. 680; 41 Pac. Rep. 693.

Power to compel examination of steam-engine operators, etc. The Board of Supervisors has power, under the Constitution and Charter, to enact an ordinance providing for the examination of all persons who desire to engage in the operation of steam engines and boilers: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 682, 686.

Power to legislate against poker-playing. The Board of Supervisors has power to legislate against poker-playing in public places for money, merchandise, or other evidence of value: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 687; citing Ex parte Tuttle, 91 Cal. 589; 27 Pac. Rep. 933; In re Murphy, 128 Cal. 29; 60 Pac. Rep. 465; Ex parte Boswell, 86 Cal. 232; 24 Pac. Rep. 1060.

Power to authorize sparring exhibitions. Under **Kerr's Cyc. Penal Code,** § 412, prize-fights still remain obnoxious to the law, but sparring exhibitions for a limited number of rounds with five-ounce gloves, and held under the auspices and protection of incorporated athletic corporations, who have paid such license fees as may be required, are protected. A statute defining a public offense and fixing the penalty of its breach does not deal with a "municipal affair": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 48, 50.

OTHER VALID ORDINANCES.

The Board of Supervisors has power, in the exercise of its local, police, and sanitary regulations, to prohibit the use of profane language: Ex parte De Laney, 43 Cal. 478; to prohibit the sale of spirituous liquors without a license: In re Stuart, 61 Cal. 374; to provide that no license shall be issued to persons engaged in the sale of liquors in dance-cellars or dance-halls, or where females attend as waitresses: Ex parte Hayes, 98 Cal. 555; 33 Pac. Rep. 337; Foster v. Police Commissioners, 102 Cal. 483, 490; 37 Pac. Rep, 763; to fix a higher license for carrying on a saloon in which females are employed than where they are not employed: Ex parte Felchin, 96 Cal. 360; 31 Pac. Rep. 224; to prohibit the maintenance, within the city limits, of any tippling-house, dram-shop, or bar-room: Ex parte Campbell, 74 Cal. 20, 26; 15 Pac. Rep. 318; to make it unlawful for any person, after twelve o'clock, midnight, to play or make a noise on any musical instrument in any drinking-saloon or beer-cellar, or for any female person to be in any drinking-saloon, beer-cellar, or billiard-room, after that hour: Ex parte Smith et al., 38 Cal. 702; to prohibit the beating of drums in the traveled streets of a city without permission of the president of the Board of Trustees: In re Flaherty, 105 Cal. 558, 567; 38 Pac. Rep. 981; to prohibit the maintenance of slaughter-houses within certain limits: Ex parte Shrader, 33 Cal. 279, 280; to regulate the sale of opium: Ex parte Hongshen, 98 Cal. 681; 33 Pac. Rep. 799; to prohibit the keeping of more than two cows within certain portions of the city limits: In re Linehan, 72 Cal. 114; 13 Pac. Rep. 170; to prohibit the feeding of cows on still-slops, and the vending of milk of cows so fed: Johnson v. Simonton, 43 Cal. 242, 248; to prevent cattle and hogs from running at large over the streets and public places within the corporate limits of the city: Amyx v. Taber, 23 Cal. 370; to forbid the dumping of garbage, filth, or rubbish anywhere, except in such place as may be designated for that purpose by the Superintendent of Streets and Highways: Ex parte Casinello, 62 Cal. 538; to prescribe the manner in which buildings used as laundries shall be constructed, and where they shall be located: Ex parte White, 67 Cal. 102; 7 Pac. Rep. 186; In re Yick Wo, 68 Cal. 294, 295, 300; 9 Pac. Rep. 139; Ex parte Moynier, 65 Cal. 33; 2 Pac. Rep. 728; In re Hang Kie, 69 Cal. 149; 10

Pac. Rep. 327; to prohibit the sale of pools on horse-races, except within the inclosure of a race-track where the race is to be run: Ex parte Tuttle, 91 Cal. 589, 590; 27 Pac. Rep. 933; to make it unlawful to become a visitor of a place for the practice of gambling: Ex parte Chin Yan, 60 Cal. 78, 79; Ex parte Lane, 76 Cal. 587; 18 Pac. Rep. 677; to prohibit any person from visiting, for the purpose of prostitution, any building kept for the purpose of prostitution: Ex parte Johnson, 73 Cal. 228; 15 Pac. Rep. 43; to prohibit the carrying of concealed weapons by any person, other than public officers and travelers, without a permit from the Police Commissioners: Ex parte Cheney, 90 Cal. 617; 27 Pac. Rep. 436; to prohibit the establishment or conducting of any steam carpet-beating machines within one hundred feet of any church, schoolhouse, residence, or dwelling-house: Ex parte Lacey, 108 Cal. 326; 41 Pac. Rep. 411; and to forbid the obstruction of sidewalks: Ex parte Taylor, 87 Cal. 91; 25 Pac. Rep. 258.

INVALID ORDINANCES.

Power to prohibit stone or rock quarries. An ordinance of the City and County of San Francisco which absolutely prohibits the maintenance or operation of a rock or stone quarry within certain designated limits of said City and County, is invalid, as being an unauthorized and unwarranted invasion of property rights. There seems to be no valid objection to the work of removing from one's own land valuable deposits of rock or stone that might not be entirely met by regulations as to the manner in which such work shall be done. Hence, an absolute prohibition of such removal under all circumstances cannot be upheld: In re Kelso, 147 Cal. 609, 612, 613; 82 Pac. Rep. 241.

Power to make issuance of trading-stamps a misdemeanor. The trading-stamp law of March 7, 1907, so far as it undertook to make the mere issuance of trading-stamps and coupons a misdemeanor, is unconstitutional and void, as not being a proper exercise of the police power, and, of course, an ordinance of that character would be invalid. In the undefined scope and inordinate exercise of this power "lurks no small danger to the republic"; and "the difficulty which is experienced in defining its just limits and bounds, affords a temptation to the legislature to encroach upon the rights of citizens with experimental laws, none the less dangerous because well meant. Our government was not designed to be paternal in form": Ex parte Drexel, 147 Cal. 763, 765, 773; 82 Pac. Rep. 429; Ex parte West, 147 Cal. 774; 82 Pac. Rep. 434.

OTHER INVALID ORDINANCES.

The Board of Supervisors does not, in the exercise of its local, police, or sanitary regulations, have power to require all occupants of land, within ninety days, to exterminate and destroy the ground-squirrels on their respective lands, and thereafter to keep their lands free therefrom: Ex parte Hodges, 87 Cal. 162; 25 Pac. Rep. 277; to prohibit the carrying on of a laundry within corporate limits, except in certain blocks, without a written permit from the Board of Trustees and the consent of a majority of the real property owners within a certain district: Ex parte Sing Lee, 96 Cal, 354; 31 Pac. Rep. 245; to provide for the purchase of a small-pox hospital: Von Schmidt v. Widber, 105 Cal. 151, 161; 38 Pac. Rep. 682; to prohibit the employment of females in dance-cellars, etc.: Ex parte Maguire, 57 Cal. 604; to provide that a hospital or insane asylum shall be maintained only in a building constructed of either brick, iron, or stone, without any reference to the size of such building, or the number of patients it is designed to accommodate therein, and without regard to other safeguards against fire with which it may be provided; or that such hospital or insane asylum shall not be permitted within four hundred yards of any dwelling or school; or that only one class of persons shall be treated in the same building; or that male and female patients shall not be cared for in the same building: Ex parte Whitwell, 98 Cal. 73-85; 32 Pac. Rep. 870; or to prohibit the employment of any one from working more than eight hours a day; or to prohibit the employment of Chinese labor: Ex parte Kuback, 85 Cal. 274; 24 Pac. Rep. 737.

Use of streets.

2. Except as otherwise provided in this Charter, or in the Constitution of the State of California, to regulate and control for any and every purpose, the use of the streets, highways, public thoroughfares, public places, alleys, and sidewalks of the City and County.

References. As to Board of Public Works, and streets in general, see Charter, post, art. VI. As to use and possession of public streets, see Montgomery v. Santa Ana etc. Ry. Co., 104 Cal. 186; 37 Pac. Rep. 786. As to street law, see **Henning's General Laws**, pp. 1311-1370.

Control of streets. This section of the Charter gives to the Board of Supervisors complete control of the use of the public streets for every purpose whatsoever. There is no express limitation elsewhere expressed in the Charter upon this broad grant. And it seems that there is nothing in the law which would prevent the granting of permission by the Board of Supervisors to throw a bridge across a street: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 583, 584.

An order of the Board of Supervisors requiring property-owners to place at all street crossings signs bearing the names of the cross streets is unlawful: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 212.

The Board of Supervisors has no power to grant an application for a permit to remove a boat-house and to locate the same temporarily on a site within the street limits, but the Board of Public Works has such power, under subd. 1, sec. 9, chap. I, art. VI, of the Charter, subject to and in conformity with a general ordinance of the Supervisors: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 227.

Railways on streets.

3. To permit the laying down of railroad tracks and running cars thereon, along any street or portion of a street, for the sole purpose of excavating and filling in a street or portion of a street or the adjoining land, for such limited time as may be necessary for such purpose and no

longer. Such tracks must be laid level with the street and must be operated under such restrictions as not to interfere with the use of such streets by the public.

References. As to authority of street-railroad companies to lay tracks in streets, see **Kerr's Cyc. Civ. Code,** § 497. As to grant of street-railway franchise, see Charter, post, art. II, chap. II, sec. 6.

Purpose of section. The language of the Charter is nowhere as clear and explicit respecting the granting of franchises to railroads as it should be; but it seems that the purpose of this section was to give authority to the Supervisors to permit a temporary use of the streets by railroads which had no other purpose than to carry dirt for the filling in of a street or adjoining land. But such privilege does not carry with it the right to use a railroad for any other than this one purpose, and the privilege expires when the necessity for its exercise for this purpose is at an end: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 568, 569.

Street-sweepings.

4. To empower street railway companies, under such conditions as the Board may see fit to impose, to convey street sweepings and offal to the public parks.

References. That the city has authority to grant to a street-railway company the right to carry freight over the public streets, see Montgomery v. Santa Ana Ry. Co., 104 Cal. 186, 190; 37 Pac. Rep. 786.

Fire limits.

5. To fix the limits within which wooden buildings or structures shall not be erected, placed or maintained, and to prohibit the same within such limits. Such limits when once established shall not be changed except by extension.

Power to amend Fire Ordinance. The Board of Supervisors has power to amend the Fire Ordinance so as to permit broader privileges than those granted therein, but such amendment must be made applicable to all in the same situation and subject to the same conditions: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 586, 587.

Fire limits. See Ex parte Fiske, 72 Cal. 125; 13 Pac. Rep. 310. The ordinance establishing fire limits in San Francisco was valid: McCloskey v. Kreling, 76 Cal. 511, 512; 18 Pac. Rep. 433.

Nuisances.

6. To provide for the abatement or summary removal of any nuisance and to condemn and to prevent the occupancy of unsafe structures.

References. That Board of Health has power to supervise the disposition of garbage, offal, and other offensive substances, see Charter, post, art. X, sec. 3. Power of city to remove shade-trees growing on sidewalk: See Vanderhurst v. Tholcke, 113 Cal. 147; 45 Pac. Rep. 266.

Construction of section. Under this subdivision and subdivision 1, ante, and under secs. 3 and 4, art. X, post, of the Charter, ample power and authority is conferred upon the Board of Supervisors to provide for the summary abatement of nuisances, and to ordain, make, and enforce all necessary sanitary laws and regulations for that purpose; and such power can only be exercised by the legislative body of the City and County—the Board of Supervisors: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 626, 628.

The obstruction of a highway or street is, under the general law, a nuisance: See **Kerr's Cyc. Penal Code,** §§ 370 and 372, and **Kerr's Cyc. Civ. Code,** § 3479; but a city ordinance not in conflict with this general law will be upheld: Ex parte Taylor, 87 Cal. 91, 93; 25 Pac. Rep. 258.

Passenger vehicles.

7. To regulate the use of hackney carriages and public passenger vehicles, and to fix the rates to be charged for the transportation of persons or personal baggage.

Public pound.

8. To provide a public pound and to make all necessary rules and regulations in the matter of animals running at large, and for the custody and destruction of the same.

Pound limits. Nothing in the Charter requires that pound limits established by the Board of Supervisors shall be co-extensive with the boundaries of the City and County: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 348.

Morgue.

9. To provide and maintain a morgue.

References. That Coroner shall have control and management of the morgue, see Charter, post, art. IV, chap. VII, sec. 1.

Places for detention.

10. To provide for places for the detention of witnesses and persons charged with insanity, separate and apart from places where criminals or persons accused of public offenses are imprisoned.

References. That witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned, see Constitution, art. I, sec. 6.

Prisons, hospitals, and almshouses.

11. To establish, maintain and regulate, and change, discontinue and re-establish City and County jails, prisons and houses of detention, punishment, confinement and reformation, hospitals and almshouses.

To acquire property.

12. To purchase or acquire by condemnation such property as may be needed for public use.

References. As to power of City and County of San Francisco to purchase real property, see Charter, ante, art. I, sec. 1. That the Board of Supervisors had no authority, under the terms of the Consolidation Act, to purchase real estate as a site for a small-pox hospital, see Von Schmidt v. Widber, 105 Cal. 151, 161; 38 Pac. Rep. 682.

Water, heat, light, power, etc.

13. Except as otherwise provided in this Charter, to regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephonic and telegraphic service to the City and County, and to acquire, regulate and control any and all appliances for the sprinkling and cleaning of the streets of the City and County, and for flushing the sewers therein.

References. As to the Acquisition of Public Utilities, see Charter, post, art. XII. As to overhead wires, see post, subd. 27, note.

Appliances for sprinkling and cleaning streets. This provision means that the Board of Supervisors may, by ordinance, determine that certain appliances for sprinkling and cleaning the streets may be used, such as will, in its judgment, do the work most effectively: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 678, 680.

Permits to erect engines and boilers. The Board of Supervisors has power to grant permits to erect engines and boilers in buildings, the supervision of which is conferred upon the Board of Public Works; and it also has power to pass an ordinance under which the power of issuing such permits may be placed in the hands of the Board of Public Works, under such general restrictions as the Board of Supervisors may deem best: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 159, 161.

Permits for operating engine and boiler. Permits for operating an engine and boiler do not run with the land, and are not assignable. They are nothing more than personal privileges granted by the city, and, not being property, are revocable at its pleasure: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 346, 347.

Permits for overhead electric wires. The Board of Supervisors has power to grant permission to the San Francisco Special Messenger

Service, to erect and maintain overhead wires for the purpose of receiving calls from patrons. It seems to be the policy of this city that such wires need not be placed underground, though a permit to carry the wires across the streets must be obtained from the Board of Public Works before such wires can be strung: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 349.

Rates for water, heat, light, and power.

14. To fix and determine by ordinance in the month of February of each year, to take effect on the first day of July thereafter, the rates or compensation to be collected by any person, company or corporation in the City and County, for the use of water, heat, light or power, supplied to the City and County, or to the inhabitants thereof, and to prescribe the quality of the service.

References. As to authority of City and County to regulate telephone and telegraph rates, see Charter, post, art. II, chap. II, sec. 7. As to the fixing of water-rates in general, see San Francisco etc. Factory v. Brickwedel, 60 Cal. 166; Fitch v. Board of Supervisors, 122 Cal. 285; 54 Pac. Rep. 901; Const., art. XIV, sec. 1.

Rates for gas and electric lighting. Nothwithstanding the fixing of the rates for gas and electric lighting by the Board of Supervisors, it is, under the Charter, the duty of such Board, each year, to call for bids for such service to be supplied to the City and County: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 197, 199.

Telephone-rates. The Board of Supervisors does not have power to fix telephone-rates, but such power may be obtained by proper amendment to the Charter: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 329, 331.

Water-rates. As to the power of the Board of Supervisors to fix water-rates upon a basis of improvements not yet made, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 444.

License taxes; exemption.

15. To impose license taxes and to provide for the collection thereof; but no license taxes shall be imposed upon any person who, at any fixed place of business in the City and County, sells or manufactures goods, wares or merchandise, except such as require permits from the Board of Police Commissioners as provided in this Charter.

References. As to power of Board of Police Commissioners to grant permits for the sale of liquor, see Charter, post, art. VIII, chap. III, sec. 1, subd. 3.

Construction of section. A consideration of art. VIII, chap. III, sec. 1, subd. 3, and art. VIII, chap. IV, sec. 7, post, of the Charter, shows that, with the exception of pawnbrokers, peddlers, junk-shop keepers, dealers in second-hand merchandise, auctioneers, retail liquor dealers, and saloon-keepers, every manufacturing establishment and every wholesale and retail house which sold or manufactured goods, wares, or merchandise at a fixed place of business in this city on and after January 8, 1900, was relieved of all license taxes theretofore imposed upon such business of manufacturing or selling goods, wares, or merchandise: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 109.

Political Code inapplicable. The act of March 23, 1901, Stats. 1900-01, p. 635, adding section 3366 to the Political Code, is not applicable to a city governed by a charter framed under sec. 8, art. XI, of the Constitution, where such charter confers upon its legislative body the power to impose and collect license taxes for revenue purposes: Ex parte Braun, 141 Cal. 204, 207, 74 Pac. Rep. 780; see **Kerr's Cyc. Pol. Code,** § 3366.

Business of selling fireworks. Whether this provision takes from the city authority, under its general police power, to impose a license upon a business such as that of selling fireworks, moneys paid for the privilege of selling fireworks should not be refunded until such time as it may be judicially determined that such authority has been taken away: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 338.

Prohibitory tax. Trading-stamp clearing-houses. An ordinance imposing a license tax of three thousand dollars per quarter on trading-stamp clearing-houses is invalid, because it is, under the guise of a revenue measure, an evident attempt to put an end to the issue and redemption of trading-stamps by levying a discriminating and prohibitory tax upon those dealers who resort to that method of attracting customers: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 276; Ex parte McKenna, 126 Cal. 429, 432; 58 Pac. Rep. 916.

Sale of imported goods in unbroken packages. No license tax can legally be collected for the sale of imported goods in unbroken packages: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 111.

Street-cars. The City and County of San Francisco has power to impose license taxes upon street-cars, whether such right has been expressly reserved in the franchise or not, and if the franchise, in express language, limits the amount of license tax that may be exacted, such license tax cannot be increased by municipal ordinance: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 512, 515.

Telephone companies. A license tax can be lawfully imposed upon telephone companies by this city, provided such licenses fall uniformly upon all engaged in such business: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 115, 120.

Source of power to raise money by taxation. The power of cities operating under freeholders' charters to raise money by taxation for municipal purposes does not find its source in any grant by the legislature. There is no enactment of the legislature purporting to vest such authority in such cities. Such power has been directly granted by the people of the State by the provisions of the State Constitution: Ex parte Braun, 141 Cal. 204, 211; 74 Pac. Rep. 780.

Taxation for municipal purposes is a "municipal affair." It is now the settled law of this State that a provision in a municipal charter framed under sec. 8, art. XI, of the Constitution, authorizing a municipality to impose a license tax for purposes of municipal revenue is a "municipal affair," and within the proper scope of a municipal charter. The legislature is therefore without authority to withdraw or modify such power: Ex parte Braun, 141 Cal. 204, 212; 74 Pac. Rep. 780; Ex parte Helm, 143 Cal. 553, 557; 77 Pac. Rep. 453; Ex parte Lemon, 143 Cal. 558, 560; 77 Pac. Rep. 455; Ex parte Jackson, 143 Cal. 564, 572; 77 Pac. Rep. 457.

That taxation for "municipal purposes," whether by assessments on property or a tax upon business, is a purely municipal matter, is expressly recognized by sec. 10, art. XI, of the Constitution, which prohibits the legislature from imposing taxes upon municipal corporations, or the inhabitants or property thereof, for "municipal purposes," and provides that the legislature may vest in the corporate authorities thereof the power to assess and collect taxes for such purposes: Ex parte Braun, 141 Cal. 204, 210; 74 Pac. Rep. 780.

Where power to collect a license tax for revenue purposes has been actually conferred upon a city, for "municipal purposes," by a charter framed for its government, under the provisions of sec. 8, art. XI, of the Constitution, such power is a "municipal affair," within the meaning of those words as used in sec. 6, art. XI, of the Constitution, and cannot be withdrawn or abrogated by the legislature. The act of 1901, Stats. 1901, p. 635, **Kerr's Cyc. Pol. Code**, § 3366, is therefore inapplicable to such a city: Ex parte Braun, 141 Cal. 204, 213; 74 Pac. Rep. 780.

Construction of Constitution. Sec. 12, art. XI, of the Constitution prohibits the legislature from imposing taxes upon counties, cities, etc., or upon the inhabitants or property thereof, for county, city, or other municipal purposes, but authorizes the legislature, by general laws, to vest in the corporate authorities thereof the power to assess and collect taxes for such purposes. This provision of the Constitution does not, however, prohibit the legislature from forbidding counties and cities from levying and collecting a license tax for revenue: Ex parte Pfirrmann, 134 Cal. 143, 148; 66 Pac. Rep. 205.

Power of county boards. Prior to the act of 1901, Stats. 1901, p. 635; **Kerr's Cyc. Pol. Code**, § 3366, county boards of supervisors did not, within municipalities, possess power to impose a license fee or tax for the purpose of regulating the liquor business, or any other business. They had power to license, within municipalities, for revenue purposes only. This power was taken away by the act of 1901, which, on its face, denies to county boards of supervisors the power to license any and all kinds of business for the purpose of raising revenue, and also limits their power to that of collecting a license for regulation only without the limits of municipalities. The result is, that such boards are left without power to levy and collect by ordinance, within a municipality, any license tax or fee whatever: Ex parte Pfirrmann, 134 Cal. 143, 144, 146; 66 Pac. Rep. 205.

Fines and penalties.

16. To prescribe fines, forfeitures and penalties for the breach of any ordinance; but no penalty shall exceed the amount of five hundred dollars or six months' imprisonment, or both.

Fees.

17. To fix the fees and charges for all official services not otherwise provided for in this Charter.

Street-car fare. There is nothing illegal in the Board of Supervisors allowing demands such as those for street-car fare, incurred in the conduct of public business, and where such expenditures are incidental to the conduct of such business: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 409.

No pay for overtime. The Board of Supervisors has no power to increase the compensation of officers as fixed by the Charter. There is no provision of the Charter under which any payment can be allowed to a salaried officer for overtime: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 708.

Fourth of July; Memorial Day.

18. To allow not to exceed two thousand five hundred dollars in any year for the celebration of the anniversary of our National Independence, and not to exceed five hundred dollars in any year for the observance of Memorial Day.

Cruelty to animals.

19. To appropriate such sums as may be paid into the treasury from fines collected on conviction of persons charged with cruelty to animals, and to authorize the payment of the same or some part thereof to any society that shall efficiently aid in such convictions.

Liability for fines collected. Cruelty to animals. The Charter does not relieve the City and County from liability to pay all fines collected under the act of March 20, 1874, Stats. 1873-74, p. 499, to Society for Prevention of Cruelty to Animals: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 156.

Interpreters' compensation.

20. To provide for the payment of compensation to the interpreters appointed by the Judges of the Superior Court to interpret testimony in criminal cases in said Court or the Police Court, or upon inquests and examinations. Such

compensation shall not exceed one hundred dollars a month for each interpreter.

References. As to appointment of interpreters, see Charter, post, art. V, chap. I, sec. 1. As to when an interpreter is to be sworn, see **Kerr's Cyc. Code Civ. Proc.,** § 1884.

Rewards to catch criminals.

21. To offer rewards not exceeding one thousand dollars in any one instance for the apprehension and conviction of any person who may have committed a felony in the City and County, and to authorize the payment thereof.

References. As to offer of reward by the Governor, see **Kerr's Cyc. Pol. Code,** § 380, subd. 8; **Kerr's Cyc. Penal Code,** § 1547. That a peace-officer was not entitled to the payment of a reward, see Lees v. Colgan, 120 Cal. 262, 267; 52 Pac. Rep. 502.

Sewer system fund.

22. To provide in the annual tax levy for a special fund to be used in the construction of a general system of drainage and sewerage.

References. As to Sewers and Drainage, see Charter, post, art. VI, chap. IV.

Official seals.

23. To provide a Seal for the City and County, and Seals for the several departments, boards and officers thereof, and a Seal for the Police Court.

References. As to common seal, see Charter, ante, art. I, sec. 1.

Hours and wages of laborers.

24. To fix the hours of labor or service required of all laborers in the service of the City and County, and to fix their compensation; provided that eight hours shall be the maximum hours of labor in any calendar day, and that the minimum wages of laborers shall be two dollars a day.

References. As to hours of labor, see Charter, art. II, chap. III, sec. 1; **Kerr's Cyc. Pol. Code,** §§ 3244-3250.

Hours of labor. Invalid ordinance. An ordinance which proposes to regulate hours of labor as to "owners and employers or employees" in "wholesale occupation and trade in the fish business," is violative of the Constitution, in several particulars: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 321.

Harmony of section, want of. There is no way by which to bring this provision into harmony with sec. 6, art. XIV, and sec. 3, chap. I, art. VI, of the Charter, post, except by regarding the general power given to the Park Commissioners and the Board of Public Works as limited by the special power granted to the Board of Supervisors. No force or effect whatever can be given to the power granted to the Supervisors, except under such construction. Hence, the Board of Supervisors, under the power granted it to fix the compensation of all laborers in the service of the City and County, may fix a minimum wage of $2.50 for a day of eight hours, notwithstanding the power given to the Board of Public Works and the Park Commissioners to fix the compensation of their employees: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 588, 590.

Boulevards.

25. To set apart as a boulevard or boulevards any street or streets, or portions of a street or streets, over which there is no existing franchise for any street railroad.

Tunnels.

26. To construct or permit the construction of tunnels, under such rules and regulations as the Board may prescribe.

Regulation of street-railways; power to fix fares and freights.

27. To regulate street railroads, tracks and cars; to permit two or more lines of street railways, operated under different managements, to use the same street, each paying an equal portion for the construction and repair of the tracks and appurtenances used by said railways jointly for such number of blocks consecutively, not exceeding ten blocks; to fix, establish and reduce the fares and charges for transporting passengers and goods thereon; to regulate rates of speed, and to pass ordinances to protect the public from danger or inconvenience in the operation of such roads. [Amendment approved, and in effect, February 5, 1903.]

References. As to railroad rates in general, see Constitution, art. XII, sec. 22. As to rates of fare on street-cars, see **Kerr's Cyc. Civ. Code,** § 501. As to street-railway franchises, see Charter, post, art. II, chap. II, sec. 6.

The old subdivision read as follows: "To regulate street railroads, tracks and cars; to compel the owners of two or more of such roads using the same street for any distance not exceeding ten blocks to use the same tracks and to equitably divide the cost of construction and expense of maintenance thereof between the owners; to fix, establish and reduce the fares and charges for transporting passengers and goods thereon; to regulate rates of speed, and to pass ordinances to protect the public from danger or inconvenience in the operation of such roads."

Construction of old section. This provision of the old section manifestly did not give the right to operate two lines of street-railroad upon a street for ten blocks. It simply empowered the Supervisors, in case the same street happened to be occupied by two railroads—for a distance not exceeding ten blocks—to compel them to use the same tracks. The Charter did not attempt to limit the distance or the number of blocks which might be occupied by two or more street-railroads. The limitation in this latter respect is imposed by **Kerr's Cyc. Civ. Code,** § 499. The City and County of San Francisco may operate a street-railroad on a street on which a franchise for a street-railroad exists, for any total distance desired, but not for more than five blocks consecutively: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 716, 717.

Overhead wires not forbidden. The Charter does not expressly or impliedly forbid overhead wires. Hence, the Board of Supervisors has power to grant permission to a street-railroad company to operate by electricity and to erect poles upon the streets. If the Board determines that such use will be beneficial to the public, no other board can veto such determination; and if the city, acting through its legislative body, denies the use of the streets for overhead wires conveying electric current for street-railroad service, no other board can be compelled by legal proceedings to grant a permit for such use: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 359, 362.

Entry into the city of steam-railroads; conditions of such privilege.

28. To allow any transcontinental or other railroad company having not less than fifty miles of road actually constructed and in operation to enter the City and County with its road and run its cars to the water front at the most suitable point for public convenience. No exclusive right shall be granted to any railroad company; and the use of all such rights shall at all times be subject to regulation by the Supervisors.

Every ordinance granting such right shall be upon the conditions that said company shall pave and keep in repair the street from curb to curb in such a manner and with such material as may from time to time be prescribed by the Supervisors, and that such company shall allow any other railroad company to use in common with it the same track or tracks, each paying an equal portion for the construction and repair of the tracks and appurtenances used by such railways jointly.

Entry of steam-railroads into city. The Board of Supervisors has power, under the Charter, to permit a steam-railroad not having fifty miles of road in operation to enter the City and County and to pass over public streets. There is no provision of the Charter limiting the power of the city to grant applications of this character, under a two-thirds vote of the Supervisors, as required in **Kerr's Cyc. Civ. Code,** § 470: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 228, 231.

Conveyance of lands.

29. To convey lands in accordance with the provisions of the Act of the Legislature of the State of California, entitled "An Act to expedite the settlement of land titles in the City and County of San Francisco, and to ratify and confirm the acts and proceedings of certain of the authorities thereof," approved March 14, 1870.

Construction of section. It is the duty of the Board of Supervisors to see to it that no land which has been reserved to the city is granted away, and to determine, by evidence satisfactory to itself, to whom grants under this section shall be made. But no new rights arise under such grants. The procedure to be followed in awarding grants by the city is laid down in the act of March 14, 1870, Stats. 1869-70, p. 353, and has been followed for thirty years: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 206.

No general power to sell city's real property. The Charter gives no general power to the Board of Supervisors to sell real property belonging to the City and County: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 690.

Trusts.

30. To provide for the execution of all trusts confided to the City and County.

References. As to power of the municipality with respect to trusts, see Charter, ante, art. I, sec. 1.

Vacant lots.

31. To transfer from one department of the City Government vacant and unused lots of land to another department.

Lease of lands of the city.

32. To provide for the lease of any lands now or hereafter owned by the City and County; but all leases shall be made at public auction to the highest responsible bidder at

the highest monthly rent, after publication of notice thereof for at least three weeks. No lease shall be authorized except by ordinance passed by the affirmative vote of two-thirds of the members of the Board, and approved by the Mayor, and no lease shall be made for a longer period than twenty years.

Sale of useless property.

33. To provide for the sale at public auction, after advertising for five days, of personal property unfit or unnecessary for the use of the City and County.

Purchase of property.

34. To provide for the purchase of property levied upon or under execution in favor of the City and County; but the amount bid on such purchase shall not exceed the amount of judgment and costs.

Mayor's contingent fund.

35. The Supervisors must appropriate annually to the Mayor thirty-six hundred dollars as and for a contingent fund, for which he need furnish no vouchers.

Relief of exempt volunteer firemen.

36. To allow not to exceed the sum of five thousand dollars a year for the relief of aged, indigent and infirm exempt firemen who served in the Volunteer Fire Department between the years 1850 and 1866. [Amendment approved, and in effect, February 5, 1903.]

Sec. 2. Equalization Board.

Sec. 2. The Supervisors shall constitute the Board of Equalization of the City and County. The Clerk of the Supervisors shall be Clerk of the Board of Equalization by virtue of his office.

References. As to State and county boards of equalization, see Const., art. XIII, sec. 9; **Kerr's Cyc. Pol. Code,** §§ 3672-3705.

Sec. 3. Finance Committee; duties and powers. To examine official bonds.

Sec. 3. The Board of Supervisors shall appoint from its members a committee consisting of three to be denominated Finance Committee, and shall fill all vacancies in the Committee. The Committee shall investigate the transactions and accounts of all officers having the collection, custody or disbursement of public money, or having the power to approve, allow, or audit demands on the treasury; shall have free access to any records, books and papers in all public offices; shall have power to administer oaths and affirmations, and to examine witnesses, and compel their attendance before them by subpœna. The Committee may at any time visit any of the public offices and make its examinations and investigations therein without hindrance.

The Committee must, at least once in every six months, examine the official bonds of all City and County officers, and investigate the sufficiency and solvency of the sureties thereon, and report in writing the facts to the Mayor. Such report shall specify each bond with the sureties, and the amounts for which each surety is bound, and state whether or not they are sufficient and solvent. Upon such report the Mayor shall take such action as shall be necessary to protect the City and County, and may require new bonds when necessary, and he may suspend any officer till a sufficient bond is filed and approved.

Sec. 4. To expert books of quasi-public corporations. Majority; records; misdemeanors in office.

Sec. 4. The Finance Committee shall have power, and it shall be its duty, to examine the records and examine and expert the books of account of all persons, companies or corporations that are required to pay a portion of their gross receipts into the treasury; and shall likewise, as an aid to the fixing of rates for furnishing water and light to the City and County and to the inhabitants thereof, have like power, and it shall be its duty, to examine the records and examine and expert the books of account of any and all persons, companies or corporations so furnishing water or light.

In the exercise of its functions, the concurrence of two members of the Committee shall be deemed sufficient. The

Committee shall keep a record of its proceedings with the names of the witnesses examined and a substantial statement of the evidence taken. If, from the examination made by the Committee, it shall appear that a misdemeanor in office, or a defalcation, has been committed by an officer, the Committee shall immediately report to the Mayor, who if he approve the report, shall take such proceedings against such officer as are authorized by law, and may suspend him pending such proceedings. Any police officer shall execute the process and orders of the Committee.

Sec. 5. No exclusive franchise.

Sec. 5. No exclusive franchise or privilege shall be granted for laying pipes, wires or conduits.

References. As to prohibition concerning the granting of special privileges or immunities, see Const., art. I, sec. 19.

Sec. 6. Street-railway franchises. Conditions and manner of granting franchise; advertisements; percentage returns. Bond with bid; penalty for breach. Award of franchise; minimum percentage returns. Rules for bidding; vote required to pass the ordinance. Further conditions; reversion to city; construction of the railway. Forfeiture of franchise; statement of gross receipts. No renewal of street-railway franchises; regulation of fares.

Sec. 6. The Board of Supervisors shall have power to grant authority for a term not exceeding twenty-five years to construct and operate street railways upon, or over, or under, the streets or parts of streets of the City and County not reserved for boulevards or carriage driveways, upon the following conditions and in the following manner and none other:

Upon application being made to the Board for any such franchise, it shall by resolution determine whether such franchise or any part thereof should be granted, and at said time shall determine on what conditions the same shall be granted additional to those conditions provided in this Chapter. After such determination, it shall cause notice of such application and resolution to be advertised in the official newspaper of the City and County for ten consecutive days. Such advertisement must be completed not less than twenty nor more than thirty days before any further action is taken by the Board on such application. The advertisement must state the character of the franchise sought, the term of its proposed continuance, and the route to be traversed; that sealed bids will be received up to a certain hour on a day to be named in the advertisement; and a further statement that no bids will be received of a stated amount, but that all bids must be for the payment to the City and County in lawful money of the United States of a stated percentage of the gross annual receipts of the person, company or corporation to whom the franchise may be awarded, arising from its use, operation, enjoyment or possession.

Every bidder shall file with his bid a bond executed to the City and County, with at least two good and sufficient sureties to be approved by the Mayor in a penal sum prescribed by the Supervisors, and set forth in such advertisement, conditioned that such bidder will well and truly observe, fulfil and perform each and all of the conditions, terms and obligations of the franchise for which said application was made in case the same shall be awarded to him, and that in case of the breach of any of the conditions of such bond, the whole amount of the penal sum therein named shall be taken to be liquidated damages, and that as such shall be recoverable from the principal and sureties on such bond.

At the next regular session after the expiration of the time stated in such advertisement up to which such bids will be received, the Board must open such bids and award the franchise to the person, company or corporation offering to pay the highest stated percentage of the gross receipts arising from the use, operation, possession or enjoyment of the franchise for which such application was made. But no award shall be made, nor any such application granted, unless the stated percentage offered to be paid for the franchise shall be at least three per centum of such gross receipts during the first five years of the period for which the franchise is to be granted, four per centum of the gross receipts during the next succeeding ten years, and five per centum of the gross receipts during the next succeeding ten years.

Except as in this section otherwise provided, bidding for such franchises must be in accordance with the provisions of this Charter in relation to bids made to the Board of Public Works, so far as such provisions may be applicable. The Supervisors may reject any and all bids, and may refuse to grant a franchise for any part of the route for which application was made. Every ordinance making such grant shall require the concurrence of three-fourths of all the members of the Board of Supervisors, as shown by the ayes and noes, and the approval of the Mayor, and at least ninety days shall intervene between the introduction and final passage of any such ordinance. It shall require a vote of five-sixths of all the Supervisors to pass the ordinance notwithstanding the objections of the Mayor.

If any bid be accepted, the franchise must be granted upon the express condition, in addition to the conditions required by this Charter, and such other conditions as may be prescribed by the Supervisors, that the per centum of the gross receipts of the railway shall be paid into the treasury on or before the tenth day of the next ensuing month after such gross receipts shall have been earned; and upon the further condition that the whole of the railway shall be continuously operated, and that at the end of the term the road-track and bed of such railway and all its stationary fixtures upon the public streets, shall become the property of the City and County; and that the grantees will, within one hundred days after the date of such grant, commence the construction of such railway, and continuously thereafter, in each and every month until the completion thereof, expend in such construction at least the sum of three thousand dollars.

The failure to comply with any of said conditions shall work an immediate forfeiture of such franchise and the road or track constructed thereunder. There shall be no power in the Supervisors to relieve from such forfeiture or from any of said conditions. On or before the tenth day of each month after said receipts shall have been earned, the President and Secretary of said railway company shall make and file with the Clerk of the Board of Supervisors a sworn statement of the gross receipts of such railway for the preceding month.

In granting any such franchise the Board of Supervisors shall impose such other lawful conditions as it may deem advisable, and must expressly provide that the franchise shall not be renewed or regranted, and that the Board shall at all times have the power to regulate the rates of fare to be charged by those using, operating, possessing or enjoying the franchise, and that the Finance Committee of the Board shall at all times be permitted to examine and expert their books as to such gross receipts. All moneys received for such franchises and in payment of the said per centum shall be credited to the General Fund.

References. As to the granting of franchises to street-railroad companies, see **Kerr's Cyc. Civ. Code,** §§ 497-511 and notes.

Construction of section. This section grants authority to sell street-railroad franchises to the highest bidder, under a procedure therein extensively set forth. It controls as to franchises for street-railroads, which may be granted for a period of not exceeding twenty-five years, and the grantees of which must pay therefor a certain percentage of gross receipts to the city; but it is applicable only to street-railroads operating as common carriers, etc. Hence, the Board of Supervisors has power to grant a privilege to maintain and operate spur-tracks without calling for competitive bids thereon: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 397, 398. See **Kerr's Cyc. Civ. Code,** §§ 465-470. See Charter, ante, art. II, chap. II, sec. 1, subd. 3.

Conflict between Charter and act of 1901. There is a material and irreconcilable conflict between the provisions of the Charter as to the granting of street-railroad franchises and those of the Franchise Act of 1901, Stats. 1901, p. 265. Hence, it follows that the provisions of the Charter should be adhered to and followed in granting franchises to street-railroads, and not those of the act of 1901: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 533, 540.

No power to grant franchises generally, nor to grant a telephone or telegraph franchise. This section contains a detailed and somewhat elaborate plan for the granting of authority, for a term not exceeding twenty-five years, to construct and operate street-railroads; and section 7, infra, gives power to the Supervisors to grant franchises or privileges to erect poles and wires for transmitting electric power or for lighting purposes; but the Charter contains no provision conferring power upon the Supervisors to grant franchises generally, nor to grant a telephone or telegraph franchise.

It follows that such franchise, if granted at all, can be granted only and in accordance with the provisions of the act of March 11, 1901: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 696, 697.

Forfeiture of franchise to telephone company. A judgment of forfeiture is not necessary where the grant of a franchise to a telephone company has made the forfeiture depend upon the happening of a condition: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 542.

Special privilege for use of streets a "municipal affair." The right to regulate and control the policy and plan which shall govern in granting special privileges for the use of streets is a "municipal affair": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 533, 539.

Geary Street franchise expired when. The franchise under which the Geary Street, Park, and Ocean Railroad Company operated its road upon Geary Street and Point Lobos Avenue was granted November 6, 1878, and, by virtue of its own conditions, expired November 6, 1903: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 661, 676.

Sec. 7. Electric power and lighting franchises; conditions and manner of granting same. Expiration of street-railway franchises; lease of such property. Franchises and leases, when in force; may be submitted to vote of people; result of popular vote.

Sec. 7. The Supervisors shall have no power to grant franchises or privileges to erect poles or wires for transmitting electric power or for lighting purposes along or upon any public street or highway of the City and County except upon all the conditions and in the manner, including competitive bidding and payment of a percentage of gross receipts, hereinbefore set out, and upon the further condition that the Board shall at all times have the right to regulate the charges of any person, company or corporation using, enjoying or possessing such franchise or privilege.

When, on the expiration of any street railroad franchise, it shall be deemed inexpedient by the Board to use any of the property reverting to it by reason of such expiration in the operation of a street railroad, then the Board shall have power to lease such property to any person, company or corporation after the notice, on the terms, and in the manner above provided as to the granting of street railroad franchises, as far as the same may be applicable. But no ordinance authorizing such lease shall be passed prior to ninety days next preceding the expiration of such franchise.

Any ordinance granting a franchise or authorizing a lease under the provisions of this section shall be in force from and after the expiration of thirty days from the date of its signature by the Mayor, or from and after the expiration of thirty days from the date of its passage by the Supervisors over his objections, unless within said thirty days a petition signed by a number of the electors of the City and County equal to fifteen per centum of the votes cast at the last preceding election shall have been filed with the Supervisors, asking that said ordinance be submitted to the vote of the people. In such case said ordinance shall be submitted at the next election to the vote of the electors of the City and County, and unless said ordinance shall at said election receive in its favor a majority of the votes cast thereon it shall have no force or effect for any purpose. If a majority of the votes be in favor of such ordinance, the Board of Election Commissioners shall, on the conclusion of the canvass of the vote thereon, proclaim such fact, and upon such proclamation said ordinance shall have full force and effect as of the date aforesaid. Said petition and submission shall be made in accordance with the provisions of section twenty of Chapter I of this Article.

Conflict with Constitution. This provision, so far as it affects lighting companies, is in conflict with the Constitution of the State as to the granting of franchises for furnishing electric light to the city and its inhabitants: See Const., art. XI, sec. 19. Lighting companies, by virtue of the Constitution of the State, are expressly granted the right to use the streets without paying for a franchise, or paying any portion of their gross receipts to the city: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 521, 522, 523.

Sec. 8. Claims for damages against the city.

Sec. 8. All claims for damages against the City and County must be presented to the Board of Supervisors and filed with the Clerk within six months after the occurrence from which the damages are claimed to have arisen; otherwise there shall be no recovery on any such claim.

References. As to claims against the City and County, see Charter, ante, art. II, chap. I, sec. 19; post, art. III, chap. IV, sec. 1. As to claims against county, see **Kerr's Cyc. Pol. Code,** §§ 4073-4076 and notes. That claim for damages caused by change of grade of street must be presented, see Bancroft v. City of San Diego, 120 Cal. 432, 439; 52 Pac. Rep. 712. That claim must be presented before action, see County of Yolo v. City of Sacramento, 36 Cal. 193. Before the adoption of the Charter, it was not necessary to present a claim against the City and County of San Francisco to the Board of Supervisors before instituting a suit upon it: Bloom v. San Francisco, 64 Cal. 503; 3 Pac. Rep. 129; Lehn v. San Francisco, 66 Cal. 76; 4 Pac. Rep. 965; Spangler v. San Francisco, 84 Cal. 12; 23 Pac. Rep. 1091. Compare Charter, ante, art. I, sec. 5.

CHAPTER III.

Contracts.

Sec. 1. Contracts to the lowest bidder; publication. Annual requisitions; competitive bidding. Proposals; penalty for failure. Notices for proposals; statements therein; award to the lowest bidder; surety bonds. Sealed bids; conditions reserved; penalty for non-compliance.

Section 1. All contracts for goods, merchandise, stores, supplies, subsistence or printing for the City and County, as well as for all subsistence, supplies, drugs, and other necessary articles for hospitals, prisons, public institutions and other departments not otherwise specifically provided for in this Charter, must be made by the Supervisors with the lowest bidder offering adequate security, after publication for not less than ten days in the official newspaper; and no purchase thereof or liability therefor shall be made or created except by contract.

Except as otherwise provided in this Charter, the Board must determine annually what goods, merchandise, stores, supplies, drugs, subsistence and other necessary articles will be needed by the City and County for the ensuing year, and it shall have no power to purchase or to pay for the same unless the provisions in this Charter provided as to competitive bidding for supplies are strictly followed, and no contract shall be made for any of the same unless upon such competitive bidding.

All proposals shall be accompanied with a certificate of deposit or certified check on a solvent bank in the City and County of ten per centum on the amount of the bid, payable at sight to the order of the Clerk of the Supervisors.

If the bidder to whom the contract is awarded shall for five days after such award fail or neglect to enter into the contract and file the required bond, the Clerk shall draw the money due on such certificate of deposit or check and pay the same into the treasury; and under no circumstances shall the certificate of deposit or check or the proceeds thereof be returned to such defaulting bidder.

Notices for proposals for furnishing the aforesaid articles shall mention said articles in general and shall state that the conditions and schedule may be found in the office of the Clerk of the Board of Supervisors; and shall also state that such articles are to be delivered at such times, in such quantities, and in such manner, as the Supervisors may designate. Any bidder may bid separately for any article named. The award as to each article shall in all cases be made to the lowest bidder for such article, and where a bid embraces more than one article, the Supervisors shall have the right to accept or reject such bid or the bid for any one or more articles embraced therein. In the case of contracts for subsistence of prisoners the advertisement for proposals shall specify each article required, the quality thereof, the quantity for each person, and the existing and probable number of persons to be supplied. No article or articles provided for in this section shall have been made in any prison. The Supervisors shall require bonds with sufficient sureties for the faithful performance of every contract. The Clerk of the Supervisors shall furnish printed blanks for all such proposals, contracts and bonds.

All bids shall be sealed and delivered by the bidder to the Clerk of the Supervisors, and opened by the Board at an hour and place to be stated in the advertisement for proposals, in the presence of all bidders who attend, and the bidders may inspect the bids. All bids with alterations or erasures therein shall be rejected. All articles so supplied shall be subject to inspection and rejection by the Supervisors and by the person in charge of the office, institution or department for which the same are supplied.

Every contract for work to be performed for the City and County must provide that in the performance of the contract eight hours shall be the maximum hours of labor on any calendar day, and that the minimum wages of laborers employed by the contractor in the execution of his contract shall be two dollars a day. Any contract for work to be performed for the City and County which does not comply with the provisions of this section shall be null and void, and any officer who shall sign the same shall be deemed guilty of misfeasance and upon proof of such misfeasance shall be removed from office.

References. As to construction of this section, see note, "Contracts for Lighting," post, sec. 6 of this chapter. As to hours of labor, see Charter, ante, art. II, chap. II, sec. 1, subd. 24. That officers must not be interested in contracts, see Charter, post, art. XVI, sec. 6; **Kerr's Cyc. Pol. Code,** § 920; Rice v. Board of Trustees, 107 Cal. 398; 40 Pac. Rep. 551. Penalty upon officer for becoming interested in contract, see **Kerr's Cyc. Penal Code,** § 71. Insufficient accusation against officer for omitting to insert eight-hour clause in contract for labor upon Golden Gate Park, see In re Stow, 98 Cal. 587, 589; 33 Pac. Rep. 490. As to invalidity of ordinance limiting hours of labor to eight hours a day, see Ex parte Kuback, 85 Cal. 274; 24 Pac. Rep. 737. As to preventing competition in bidding, and giving the Board an opportunity for favoritism, see Ertle v. Leary, 114 Cal. 238; 46 Pac. Rep. 1.

Construction of sections 1 and 5. The first paragraph of this section requires that all contracts for printing for the City and County of San Francisco must be made by the Supervisors with the lowest bidder offering adequate security, but the Charter provides, in art. II, chap. III, sec. 5, that when the Supervisors believe that "the public interest will be subserved thereby," they may reject any and all bids and cause notice for proposals to be re-advertised. Mandamus, therefore, will not lie in favor of the lowest bidder, for printing forms and blanks, where the Board of Supervisors of such City and County, in its advertisements for sealed proposals therefor, expressly reserved the right to reject "any and all bids if the public good so require": Stanley-Taylor Co. v. Supervisors, 135 Cal. 486, 487, 488; 67 Pac. Rep. 783. As to printed forms and blanks, see post, sec. 5.

Competitive bidding. Hospital supplies. Control of expenditures by Board of Health. The provisions of this section must be strictly followed, and no contract let unless upon competitive bidding. It is the plan of the Charter that all hospital supplies shall be obtained through contracts let to the lowest bidder by the Board of Supervisors. But the Board of Health is given exclusive control and disposition of all expenditures necessary in the institutions under its immediate control, except as provided in this article and chapter: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 625.

Janitors' and engineers' supplies, fuel for public buildings, lumber, hardware, and miscellaneous supplies used in the repair of public buildings do not, under the broadest construction, come under the title of materials for repair of streets and improvements thereof, and as to these supplies the Board of Supervisors alone can call for bids: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 659, 660. See Charter, post, art. VI, chap. II, sec. 31.

Number and rejection of bids. Alterations and erasures. There must be, in effect, as many bids as there are articles upon which bids are required. This being so, alterations or erasures therein would mean alterations or erasures in the bid upon a certain article. The Board, therefore, should reject the bid, upon any article, in which bid there is an erasure or alteration, but should not, on account of an erasure or alteration, reject all other bids presented in the same offer or proposal: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 310, 311.

Resolutions awarding contracts need not be published, under the Charter provision which requires publication of resolutions providing for the expenditure of public money. Such publication would be an unnecessary expense: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 718; see art. II, chap. I, sec. 13.

Resolutions of award of contract, sufficiency of. Copy of schedule to be annexed to executed contract. In resolutions of award of contract, a reference to the items by number and price, coupled with a general reference for particulars to the schedule on file, is sufficient identification. When the contract is executed, a copy of the schedule should also be attached: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 319.

Supplies to Board of Public Works. The Board of Supervisors should directly make contracts for the furnishing of supplies generally to the Board of Public Works, as well as for other departments: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 659, 660. See Charter, post, art. VI, chap. II, sec. 31.

Sec. 2. Official advertising. What official advertising includes. Official newspaper. Delinquent tax list. Unauthorized publications.

Sec. 2. All contracts for official advertising shall be let annually in like manner by the Supervisors to the lowest responsible bidder publishing a daily newspaper in the City and County which has a bona fide daily circulation of at least eight thousand copies, and has been in existence at the time of letting such contract for at least two years. In inviting proposals therefor, such advertising shall not be classified and no proposal shall be acted upon which offers to do such advertising at different rates for different portions thereof.

Such advertising shall be construed to mean the advertising and publication of all official reports, orders, ordinances, messages, resolutions, notices inviting proposals and all notices of every nature relating to city work. No part or kind of such advertising shall be charged or contracted for at a higher rate than any other part or kind of the same is charged or contracted for, except in the case of the delinquent tax list.

The newspaper to which the award of such advertising is made shall be known and designated as the "official newspaper."

The advertising of the delinquent tax list shall be let to the lowest responsible bidder on a separate bidding from all other official advertising.

No board, department or officer shall make any publication which is not expressly authorized by this Charter or by the Supervisors.

Delinquent tax list as official advertising. The delinquent tax list is regarded as part of the official advertising; and, as such, the Charter provides that it is to be published in the kind of newspaper designated in this section: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 241.

"Lowest responsible bidder," meaning of. The Board of Supervisors has the right to determine who is the "lowest responsible bidder." These words have a well-recognized legal significance. They vest discretion in the Board. The determination as to who is a responsible bidder is not confined to the financial responsibility of a bidder alone, but may involve other matters, such as the good faith of a bidder and his practical ability to do the work faithfully, skilfully, and promptly: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 188, 189.

Sec. 3. Stationery supplies. Proposals for supplies. Forms for printing. Prohibition as to names; stationery in charge of Clerk of Supervisors. Must account for same. Requisitions for printing.

Sec. 3. The Clerk of the Supervisors shall annually, under the direction of the Supervisors, advertise for proposals for supplying the various departments, officers and offices of the City and County with all stationery and supplies in the nature of stationery, assessment books, minute books, blank books and the printing of blanks. The contracts for stationery shall be separate from those for printing.

Notice for proposals for supplies shall require a greater or less quantity to be delivered at such times and in such manner as the Supervisors may designate. The advertisement for bids for paper shall state the weight, quality and size of the various kinds required, and that for printing shall enumerate the various letter heads, tax bills, tax receipts, court notices, and all blanks, papers and documents now used or hereafter required in any and all departments of the City and County, including the forms, papers and blanks now used or hereafter required by the courts of the City and County.

The forms for all printing shall be consecutively numbered, and each form and blank shall be known as No. —— (specifying the number). Such advertisement shall be published for at least ten days, and shall require the bidders to state the price at which each article will be furnished, printed or manufactured, as the same may be required from time to time during such period, and the amount of the bond that will be required as security for the performance of the contract.

No stationery furnished to any officer or department shall contain the name or names of the officer or officers constituting the head of the department or board. The contract or contracts must be made with the lowest bidder offering adequate security, quantity and quality being considered. The Clerk of the Supervisors shall have rooms in the City Hall for the custody of such stationery, and when purchased the same shall be delivered to him, and he shall issue and distribute the same to the various departments as required.

He shall keep accounts in detail, charging himself with all goods received, and crediting himself with the goods delivered upon order or requisition as hereinafter provided. When any of such supplies are required for any department, the Clerk of the Supervisors shall issue the same after the requisition for such articles has been made by the head of such department and approved by the Mayor.

All requisitions for printing shall be made in a similar manner. The Clerk shall report monthly in writing to the Supervisors in detail, the amount of all paper, blanks, books, stationery and printing ordered by and delivered to any department or officer.

Stationery supplies. Various departments. "The Charter introduces a novel plan with regard to stationery. It requires the Board of Supervisors to supply the various departments, officers and offices, with stationery, blanks, and various supplies, which must be obtained upon contracts made by the Board after public bids have been called for. Each department makes requisitions for such supplies as it needs, and the same can be issued only after approval by the Mayor." The Board of Health, the Board of Fire Commissioners, the Department of Electricity, the Board of Public Works, City and County Hospital, and City and County Almshouse, must look to the Clerk of the Supervisors for all stationery and printing, and cannot pay for such supplies out of the appropriations made to their several departments. It is true that the Board of Health and the Board of Fire Commissioners have been given exclusive control of their appropriations. This does not mean, however, that they can do with such appropriations as they please; but that they control them within the law and for the purpose of such departments. As the Charter requires these departments to be furnished with stationery by the Board of Supervisors, the appropriations for such departments cannot be used for the purchase of stationery. No moneys should be appropriated to these departments for such purpose, but allowance should be made therefor in the stationery appropriation made in the budget: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 363.

Sec. 4. Collusion with bidder constitutes misfeasance.

Sec. 4. Any officer of the City and County, or of any department thereof, who shall aid or assist a bidder in securing a contract to furnish labor, material or supplies, at a higher price or rate than that proposed by any other bidder, or who shall favor one bidder over another, by giving or withholding information, or who shall wilfully mislead any bidder in regard to the character of the material or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to that called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kinds of material or supplies than has been actually received, shall be deemed guilty of misfeasance and shall be removed from office.

Sec. 5. Execution, signing, and registration of contracts. New bids may be invited.

Sec. 5. All contracts provided for in this Chapter must be in writing and executed in the name of the City and

County by the Mayor. All such contracts must be countersigned by the Clerk of the Supervisors, and registered by number and date in a book kept by him for that purpose. When a contractor fails to enter into the contract awarded to him or to perform the same, new bids must be invited, and a contract awarded as provided herein in the first instance. When the Supervisors believe that the prices bid are too high, or that bidders have combined to prevent competition, or that the public interest will be subserved thereby, they may reject any and all bids and cause the notice for proposals to be re-advertised.

References. That a charter requirement that a contract be in writing is valid, and that it must be observed, or the contract will be invalidated, see Los Angeles Gas Co. v. Toberman, 61 Cal. 199, 202; Frick v. Los Angeles, 115 Cal. 512; 47 Pac. Rep. 250.

Contracts for printed forms and blanks. Though this chapter of the Charter, secs. 1 and 5, requires all contracts for printed forms and blanks for the use of the City and County of San Francisco to be let by the Board of Supervisors to the lowest responsible bidder, a resident taxpayer cannot, in advance of action by the Board, maintain an injunction to prevent it from letting such a contract to any other than the lowest responsible bidder, upon the ground that the members of the Board of Supervisors had, in their official capacity, and before advertising for bids, passed an order or resolution that no printing should be let except to printing establishments entitled to use a union label, while the lowest responsible bidder was a non-union office, and not entitled to use such label. The Board of Supervisors is a quasi-judicial body, whose duties are prescribed by law, and, in advance of any action by it, a court will presume that such Board will do its duty, and let the contract in the method prescribed in the Charter: Barto v. Board of Supervisors, 135 Cal. 494, 495, 496; 67 Pac. Rep. 758.

Obligation of contract. Time. The time when a contract is entered into determines the year in which the obligation of the contract must be met. No obligation arises prior to the letting of the contract: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 510.

Sec. 6. Lighting contracts. Term. Rate. Demands.

Sec. 6. No contract for lighting streets, public buildings, places or offices, shall be made for a longer period than one year, nor shall any contract to pay for gas, electric light or any illuminating material at a higher rate than the minimum price charged to any other consumer, be valid. Demands for lighting public buildings shall be presented monthly to the board or department using or having charge thereof, and shall specify the amount of gas, electric light or illuminating material consumed in such building during the month.

Contracts for lighting. The purpose of this provision is clear; it is to insure the city against paying more for gas or electric lighting service than the most favored private consumers have to pay for such service. Its language does not indicate that the word "charge" has any reference to the rate fixed by the Board of Supervisors, under authority of the Constitution. The Board does not, as a matter of fact or of law, fix a minimum price, but does fix a maximum; therefore the Board of Supervisors has no power to make a contract with an illuminating company for lighting service at the maximum rate, when other consumers obtain gas or electric light at a lower rate. The city is not engaged in the business of furnishing gas or electric light, and hence does not "charge" any price for gas or electric light. It is the company or companies which render the service that fix therefor a selling price at or below the maximum rate established by the city, and charge such price to the consumers: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 654, 655.

Under the Charter provisions, a contract for lighting the public streets, which embraces a proposition other than that of lighting, to wit, that of furnishing ornamental poles, cannot be legally awarded. A call for bids must not be coupled with a proposition for the purchase of a portion of a street-lighting plant by the municipality. The object of sec. 1, chap. III, art. II, was to insure against this very thing, viz., the combining of one commodity with another in the proposal, and acceptance of the lowest bid for the combination: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 285, 287.

Though a contract for service, such as that for furnishing gas and electric lighting, was invalid, if gas and lighting were furnished under such contract, the Board of Supervisors can adjust the matter, and allow a fair and reasonable compensation for the services performed, without reference to the rates or price specified in the contract: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 13, 14, 15.

It is not necessary to publish specifications for lighting streets and public buildings in full: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 301.

ARTICLE III.

FINANCE AND TAXATION.

CHAPTER I.

Levying of Taxes.

Sec. 1. Estimates of annual requirements in each department.

Section 1. On or before the first Monday of April in each year the heads of departments, offices, boards and commissions of the City and County shall send to the Supervisors an estimate in writing of the amount of expenditure, specifying in detail the objects thereof, required in their respective departments, offices, boards and commissions, including a statement of the salaries of their subordinates. Duplicates of these estimates shall be sent at the same time to the Auditor.

References. As to levy of taxes, see **Kerr's Cyc. Pol. Code,** §§ 3713-3719. That the general revenue system provided in the Political Code applies to the City and County of San Francisco, see People v. Reis, 76 Cal. 269, 276; 18 Pac. Rep. 309. That a city may provide, in a freeholders' charter, for taxation for municipal purposes, see Security Savings etc. Co. v. Hinton, 97 Cal. 214, 219; 32 Pac. Rep. 3. That the legislature has no power, under art. XI, sec. 12, of the Constitution, to impose taxes within the territory of cities, etc., for local purposes, see San Francisco v. Liverpool etc. Ins. Co., 74 Cal. 113, 117; 15 Pac. Rep. 380.

Sec. 2. Auditor's annual estimate of the city's requirements and revenue.

Sec. 2. On or before the first Monday of May in each year the Auditor shall transmit to the Supervisors an estimate of the probable expenditures of the City and County government for the next ensuing fiscal year, stating the amount required to meet the interest and sinking funds for all outstanding funded debts, and the wants of all the departments of the municipal government in detail, and showing specifically the amount necessary to be apportioned to each fund in the treasury; also an estimate of the amount of income from fines. licenses and other sources of revenue, exclusive of taxes upon property, and the probable amount required to be levied and raised by taxation.

Sec. 3. Supervisors to make annual budget. Public hearing.

Sec. 3. The Supervisors shall meet annually between the first Monday of May and the first Monday of June, and by vote of a majority of all the members thereof make a budget of the amounts estimated to be required to pay the expenses of conducting the public business of the City and County for the next ensuing fiscal year. The budget shall be prepared in such detail as to the aggregate sum and the items thereof allowed to each department, office, board or commission, as the Supervisors shall deem advisable.

Before finally determining upon the budget, the Supervisors shall fix such sufficient time or times as may be necessary to allow the taxpayers to be heard in regard thereto, and the Supervisors shall attend at the time or times so appointed for such hearing.

Budget cannot be increased or diminished. Appropriations fixed by the municipal budget cannot be increased or diminished during the fiscal year: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 373.

Sec. 4. Mayor may veto items. Apportionment of funds.

Sec. 4. Any item in said budget may, within ten days, be vetoed in whole or in part by the Mayor, and it shall require fifteen votes of the Supervisors to overcome such veto. Action thereon must be taken before the last Monday of June.

After the final estimate is made in accordance herewith, it shall be signed by the Mayor and the Clerk of the Supervisors, and the several sums shall then be appropriated for the ensuing fiscal year to the several purposes and departments therein named. The estimate shall be filed in the office of the Auditor.

Sec. 5. Annual tax levy.

Sec. 5. The Supervisors must cause to be raised annually according to law, and collected by tax, the amounts so appropriated, less the amounts received from fines, licenses and other sources of revenue.

Sec. 6. Demands upon the treasury.

Sec. 6. Except as otherwise provided in this Charter, no money shall be drawn from the treasury unless in consequence of appropriations made by the Supervisors and upon warrants duly drawn thereon by the Auditor.

Sec. 7. Warrants.

Sec. 7. No warrant shall be drawn except upon an unexhausted specific appropriation.

Sec. 8. Urgent necessity fund.

Sec. 8. The Supervisors may appropriate thirty-six thousand dollars a year for urgent necessities not otherwise provided for by law. No money shall be paid out of this appropriation unless authorized by a five-sixths vote of all the members of the Board of Supervisors and approved by the Mayor.

Sec. 9. One-twelfth limit on monthly expenditures. Registration of demands and agreements. Unexpended balances may be carried forward.

Sec. 9. It shall not be lawful for the Supervisors, or for any board, department, officer or authority having power to incur, authorize or contract liabilities against the treasury, to incur, authorize, allow, contract for, pay or render payable in the present or future, in any one month, any expenditure, demand or demands, against any appropriation, which, taken with all other expenditures, indebtedness or liability made or incurred up to the time in such month of making or incurring the same, shall exceed one-twelfth part of the amount of the appropriation for the fiscal year.

When any board, department or officer having power to incur liabilities against the treasury shall make any agreement for obtaining supplies or having labor performed, such department, officer or board shall register such agreement by number and date, and all demands arising under such agreement shall be payable in the order of such registration. Such department, board or officer must inform the person with whom it is proposed to make such agreement of the amount of money available or likely to be available in the fund from which such demands are payable.

If, at the beginning of any month, any money remains unexpended in any appropriation which might lawfully have been expended during the preceding month, such unexpended sum or sums, except so much thereof as may be required to pay all unpaid claims upon such appropriation, may be carried forward and expended in any succeeding month of such fiscal year; but not afterwards, except in payment of claims lawfully incurred during such fiscal year. Appropriations provided to meet the expense of elections; for the support and maintenance of the Assessor's and Tax Collector's departments; and for urgent necessities, shall be exempt from the provisions of this section.

References. As to One-Twelfth Act, see Hunt v. Broderick, 104 Cal. 313, 317; 37 Pac. Rep. 1040; Weaver v. San Francisco, 111 Cal. 319, 326; 43 Pac. Rep. 972.

Dual purpose of section. This is one of the most clearly declared provisions in the entire Charter; and its purpose is manifestly dual: to make entirely certain and secure the payment of those who contract with the city for the sale of supplies, and to safeguard the city itself against extravagance during the early months of the fiscal year, and a consequent deficit, or a hampered and embarrassed government during the closing months of the year. Hence, the Board of Supervisors cannot legally expend more than one-twelfth of the appropriation made for any particular fiscal year for water used in public buildings: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 558, 559.

Construction of Constitutional provision. Sec. 18, art. II, of the Constitution provides as follows: No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof on or before maturity, which shall not exceed forty years from the time of contracting the same; provided, etc. Any indebtedness or liability incurred contrary to this provision, with the exceptions hereinbefore recited, shall be void.

This provision is an additional limitation upon the authority of the City and County to incur liability by contract; and its effect is, that an indebtedness created in one fiscal year cannot be paid out of the revenue of the next or any following year: San Francisco Gas Co. v. Brickwedel, 62 Cal. 641; McGowan v. Ford, 107 Cal. 177; 40 Pac. Rep. 231; Weaver v. San Francisco, 111 Cal. 319; 43 Pac. Rep. 972; Montague v. English, 119 Cal. 225; 51 Pac. Rep. 327. Compare Weaver v. San Francisco, 146 Cal. 728, 732; 81 Pac. Rep. 119.

Sec. 10. Indorsement of Auditor upon contracts. Exception. Auditor's weekly statements.

Sec. 10. No contracts made, the expense of whose execution is not provided by law or ordinance to be paid by assessments upon the property benefited, shall be binding or of any force, unless the Auditor shall indorse thereon his certificate that there remains unexpended and unapplied as herein provided, a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract, as certified by the board or officer making the same. This provision shall not apply to work done, or supplies furnished, involving the expenditure of less than two hundred and fifty dollars, unless the same is required by law to be done by contract at public letting. The Auditor shall make such indorsement upon every such contract so presented to him, if there remains unapplied and unexpended such amount so specified by the officer making the contract, and thereafter shall hold and retain such sum to pay the expense incurred until the contract shall be fully performed. The Auditor shall furnish weekly to the head of each department a statement of the unexpended balances of the appropriation for his department.

References. A provision of a city charter requiring the auditor's certificate is not invalid: Pollok v. San Diego, 118 Cal. 593; 50 Pac. Rep. 769; Higgins v. San Diego Water Co., 118 Cal. 524; 45 Pac. Rep. 824; 50 Pac. Rep. 670.

Sec. 11. Tax levy; when made; amount. Dollar limit.

Sec. 11. On or before the last Monday of June in each year the Supervisors shall levy the amount of taxes for City and County purposes required to be levied upon all property not exempt from taxation. The amount shall be sufficient to provide for the payment during the fiscal year of all demands upon the treasury authorized to be paid out of the same; but such levy, exclusive of the State tax and the tax to pay the interest and maintain the sinking funds of the bonded indebtedness of the City and County, and exclusive of the tax to pay for the maintenance and improvement of the parks, squares and public grounds of the City and County, shall not exceed the rate of one dollar on each one hundred dollars valuation of the property assessed. The Supervisors in making the levy shall apportion the taxes to the several funds.

References. That the Assessor must complete his assessment-book on or before the first Monday in July, see **Kerr's Cyc. Pol. Code,** § 3652. That the Board of Supervisors have until the first Monday of July in which to increase or lower assessments, and to equalize the same, see **Kerr's Cyc. Pol. Code,** § 3672.

Construction of provision. This provision does not apply in case of any "great necessity or emergency": See art. III, chap. I, sec. 13, post. In such case, the limitation of one dollar may be temporarily suspended, so as to enable the Supervisors to provide for such necessity or emergency, but this can be done only by ordinance passed by the unanimous vote of the Supervisors and approved by the Mayor: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 431, 435.

Limitation on power to levy taxes. When, by the Constitution or the Charter, the power of the municipality to levy taxes is limited to a certain rate, and the maximum rate is actually levied, the courts have refused even a judgment creditor the right to compel the municipality to levy a greater tax, or to levy a specific tax to pay the judgment: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 431, 436.

Theory of Charter. The theory of the Charter is, that the revenues of each year shall meet the expenses of each year. One year's income cannot be used for another year's debts, but each year shall be sufficient unto itself. This being so, the Charter fixes an arbitrary limit upon the rate of the tax levy, which is to be used for current expenses: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 431, 435.

Sec. 12. Apportionment of revenue and income.

Sec. 12. In making the apportionment, the Supervisors shall take into account and apportion to the several funds the income and revenue estimated to arise during the fiscal year from licenses, fees and other sources; but the income to pay the interest on the bonded indebtedness and provide for the sinking funds shall always be provided for out of the tax on property.

Sec. 13. Temporary suspension of dollar limit. Unanimous vote necessary. Liabilities that are prohibited.

Sec. 13. The limitation in section eleven of this Chapter upon the rate of taxation shall not apply in case of any great necessity or emergency. In such case the limitation may be temporarily suspended so as to enable the Supervisors to provide for such necessity or emergency. No increase shall be made in the rate of taxation authorized to be levied in any fiscal year, unless such increase be authorized by ordinance passed by the unanimous vote of the Supervisors and approved by the Mayor. The character of such necessity or emergency shall be recited in the ordinance authorizing such action, and be entered in the Journal of the Board.

Nothing in this section shall authorize the incurring of liabilities against the treasury not allowed by law, or which cannot be paid out of the income and revenue provided, collected and paid into the proper fund as its proportion of the same for such fiscal year, or permit liabilities or indebtedness incurred in any one fiscal year to be a charge upon or paid out of the income or revenue of any other fiscal year.

References. See Charter, post, art. III, chap. II, sec. 6.

Construction of art. XI, sec. 18, of the Constitution. Sec. 18 of art. XI of the State Constitution reads as follows: "No county, city, town, township, board of education, or school district shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year without the assent of two-thirds of the qualified electors," etc. This section has been held to refer only to debts or liabilities which it was within the power of the municipality to incur or not to incur, and that it would not concern those demands definitely fixed by law and absolutely payable thereunder: San Francisco Gas Co. v. Brickwedel, 62 Cal. 641; Shaw v. Statler, 74 Cal. 258; 15 Pac. Rep. 833; Lewis v. Widber, 99 Cal. 412, 415; 33 Pac. Rep. 1128.

Sec. 14. Municipal revenues and bonds.

Sec. 14. The Supervisors shall fix the amount of municipal revenues and provide for the collection thereof. They shall from time to time provide for the payment of the interest and principal of the bonds for which the City and County is liable.

Sec. 15. Disbursements.

Sec. 15. The Supervisors shall authorize the disbursement of all public moneys, except as otherwise specifically provided in this Charter.

Sec. 16. Surplus moneys go to Surplus Fund. Exceptions.

Sec. 16. At the close of each fiscal year, if all demands against each fund have been paid or satisfied, and all disputed or contested demands finally adjudicated, the Supervisors shall direct the Treasurer to transfer all surplus moneys to a fund to be called the Surplus Fund, except such surplus moneys as are in the several interest and sinking funds, in the Common School Fund, in the Park Fund, the Library Fund, the Police Relief and Pension Fund, in the Firemen's Relief and Pension Fund, and in such other funds the disposition of whose surplus moneys is in this Charter otherwise provided for.

CHAPTER II.

The Several Funds.

Sec. 1. Separate funds. No division.

Section 1. The income and revenue paid into the treasury shall be at once apportioned to and kept in separate funds. It shall not be lawful to transfer money from one fund to another or to use the same in payment of demands upon another fund. The provisions of this section shall not apply to fees paid into the treasury and placed temporarily to the credit of the Unapportioned Fee Fund under the provisions of Chapter III of this Article.

References. As to Unapportioned Fee Fund, see Charter, post, art. III, chap. III, secs. 4, 10, 11, 12. As to transfer from one fund to another, see Charter, ante, art. III, chap. I, sec. 16. As to the Public Building Fund, see Charter, post, art. XVI, sec. 29.

Sec. 2. Continuance of funds. General Fund. Park Fund; sources; purpose. Library Fund.

Sec. 2. The several funds in the treasury authorized by law at the time this Charter takes effect, or provided for by this Charter, shall continue therein so long as there shall be occasion therefor; and the moneys therein, or which may belong thereto, shall not be used for any purpose other than that for which the same were raised except as otherwise provided in this Charter.

The General Fund shall consist of moneys received into the treasury and not specially appropriated to any other fund.

The Park Fund shall consist of the moneys annually apportioned to said Fund by virtue of the tax provided for in this Charter for the maintenance, preservation and improvement of the parks, squares, avenues and public grounds of the City and County; of all moneys accruing from rents of buildings under the jurisdiction of the Park Commissioners; and of all moneys coming into the hands of said Commissioners whether from donations or otherwise. Out of said Fund shall be paid all the expenses of every kind for the preservation, maintenance and improvement of the parks, squares, avenues and public grounds of the City and County.

The Library Fund shall consist of the moneys annually apportioned to said Fund by virtue of the tax provided for in this Charter for the maintenance of Library and Reading Rooms, and the purchase of books therefor. Out of said Fund shall be paid all the expenses necessary to the maintenance of such Library and Reading Rooms and the purchase of books therefor.

References. As to transfer of balances remaining in various funds at time the Charter took effect, see Charter, post, art. XVI, sec. 37. As to making provision for improvement of parks, etc., see Charter, post, art. XIV, sec. 11. As to Library Fund, see Charter, post, art. VII, chap. VII.

The General Fund is composed of all moneys received into the treasury and not specifically appropriated to any other fund. All moneys not specifically appropriated to any other fund go into the General Fund, which is therefore constituted a residuary fund. If moneys are collected for taxes, fines, or licenses, which are not required by any of the specific appropriations made in the budget, they constitute an unappropriated surplus with the General Fund. The Charter-makers contemplated that there would be, or might be, a surplus, and provided a Surplus Fund, into which all balances of appropriations not entirely exhausted should go at the end of the year: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 373, 374.

St. Mary's Park Fund. Money raised for the St. Mary's Park Fund constitutes a fund which is protected against diversion by this section, and by sec. 37, art. XVI, post, and by sec. 4 of the statute of March 19, 1899, Stats. 1899, p. 316: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 249.

Sec. 3. Surplus Fund. Purposes of the Fund.

Sec. 3. The Surplus Fund shall consist of the moneys remaining at the end of any fiscal year in any other funds (except the Common School Fund and the other funds by this Charter otherwise expressly provided for) after all valid demands, indebtedness and liabilities against said funds incurred within such fiscal year have been paid and discharged; provided, that all disputed or contested claims payable out of such funds have been finally adjudicated.

The Surplus Fund shall be used for the purposes and in the order following:

1. In payment of any final judgment against the City and County.
2. In liquidation and extinguishment, under such regulations as the Supervisors may adopt, of any outstanding funded debt of the City and County.
3. To be carried over and apportioned among the funds and used in the ensuing fiscal year as part of the income and revenue thereof.

References. That moneys in certain funds shall be carried forward and apportioned for the ensuing year, see sec. 5, infra, of this chapter. As to levy of tax for Common School Fund, see Charter, post, art. VII, chap. V, sec. 2. As to approval of demands payable out of the treasury, see Charter, ante, art. II, chap. I, sec. 19. As to transfer of all surplus moneys to the Surplus Fund, see art. III, chap. I, sec. 16. As to requisites of all demands against the City and County, see Charter, post, art. III, chap. III, sec. 13.

The Surplus Fund is a fund created out of whatever money the city does not use during the year, and against which there can be no claims, because all legal indebtedness of the year has been paid. This fund is available for certain purposes, at the end of the fiscal year; viz., payment of judgments and of funded indebtedness, and if it cannot be used for such purposes, or is not so exhausted, it is carried over into the next fiscal year and treated as part of the funds of that year: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 373, 375.

The surplus, under the Charter, goes, at the end of the year, into a Surplus Fund. This fund does not come into existence until the very close of the fiscal year, and then it is made available for the payment of certain specified obligations, final judgments, and bonded debt. After the payment of these specified demands therefrom, the balance of the money in such Surplus Fund is to be carried over into the revenues of the succeeding year and disposed of as any other revenue in the budget: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 431, 434.

Surplus Fund. Payment of judgments. Otherwise than out of the Surplus Fund, a judgment cannot be collected against the city, except from a specific appropriation made in the budget, and such appropriation may, in some cases, be compelled by mandamus: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 454, 455.

A final judgment for protested taxes is payable out of the Surplus Fund of any year when there is money in such fund to pay the same: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 526.

Sec. 4. Special Deposit Fund.

Sec. 4. The Special Deposit Fund shall consist of:

1. All moneys paid into court and deposited with the Treasurer by the County Clerk.

2. All moneys received by the Public Administrator and deposited by him with the Treasurer.

References. As to duty of the Public Administrator to deposit moneys with the County Treasurer, see **Kerr's Cyc. Code Civ. Proc.**, § 1737.

3. All moneys deposited with the Treasurer on special deposit.

The moneys in the Special Deposit Fund shall be paid out in the manner prescribed by law.

The Special Deposit Fund is created for the reception of moneys that do not belong to the City and County: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 460, 461.

Sec. 5. Funds to be carried forward.

Sec. 5. Except as otherwise provided in this Charter any moneys remaining at the end of any fiscal year in any interest and sinking fund or a fund provided by a special bond issue for a specific purpose, the Common School Fund, the Park Fund, the Library Fund, the Firemen's Relief and Pension Fund, Police Relief and Pension Fund, and the Public Building Fund shall be carried forward and apportioned to said respective funds for the ensuing fiscal year.

References. As to the Common School Fund, see Charter, post art. VII, chap. V, sec. 2. As to the Park and Library Funds, see Charter, ante, art. III, chap. II, sec. 2. As to the Firemen's Relief and Pension Fund, see Charter, post, art. IX, chap. VII. As to the Police Relief and Pension Fund, see Charter, art. VIII, chap. X.

Sec. 6. Payment of unpaid demands.

Sec. 6. Any demand against the treasury or against any fund thereof remaining unpaid at the end of the fiscal year for lack of money applicable to its payment, may be paid out of any money which may subsequently come into the proper fund from delinquent taxes or other uncollected income or revenue for such year. Such demands shall be paid out of such delinquent revenue, when collected, in the order of their registration.

References. See Charter, ante, art. III, chap. I, sec. 13.

Creation of deficit. There is no warrant for incurring a deficit or increasing one already existing, or for attempting in any manner, directly or indirectly, to make one fiscal year bear the burdens of another. Such would inevitably be the result of withholding June salaries and attempting to pay them out of the funds of the next fiscal year. A deficit cannot be created by otherwise using funds available for the payment of June salaries, thus forcing such salaries to be carried over into the next fiscal year: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 192, 196.

Each fiscal year is to pay its own debts, and to be sufficient and complete in itself as to all matters financial, save where two-thirds of the electors otherwise decide, and this does not seem to be contravened by the provisions of sec. 37, art. XVI, post, of the Charter, relating to financial management: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 192, 194.

Sec. 7. Redemption of outstanding bonds. Sinking Fund to liquidate surrendered bonds.

Sec. 7. When there shall be to the credit of any sinking fund in the treasury a sum not less than twenty thousand dollars which may be applied to the redemption of any outstanding bonds to which such fund is applicable, which are not redeemable before their maturity, it shall be the duty of the Mayor, Auditor and Treasurer to advertise for thirty days, inviting proposals for the surrender and redemption of the bonds.

After such advertisement the money in such Sinking Fund, or such portion thereof as may be required therefor, shall be awarded to the person or persons offering to surrender said bonds for the lowest price. Upon such award, when duly audited, the Treasurer shall, upon the surrender of the bonds, pay the amount to the person or persons to whom the same was awarded. No bid for the surrender of any of the bonds shall be accepted, which shall require a greater sum of money for their redemption than the then worth of the principal and interest of the bonds, calculated with interest, not exceeding four per centum per annum.

No payment of back claims out of delinquent taxes. It has been repeatedly decided by the Supreme Court that the funds of each fiscal year must bear the burden of the expenses incurred in such year. Hence, money collected for delinquent taxes for certain designated years, and duly credited to the same, cannot be used for the payment of back claims: San Francisco Gas Co. v. Brickwedel, 62 Cal. 641; Smith v. Broderick, 107 Cal. 644; 40 Pac. Rep. 1033; Weaver v. San Francisco, 111 Cal. 319; 43 Pac. Rep. 319; Montague v. English, 119 Cal. ?25; 51 Pac. Rep. 327.

CHAPTER III.

The Custody of Public Moneys.

Sec. 1. All moneys to be paid into the treasury. Disbursement.

Section 1. All moneys arising from taxes, licenses, fees, fines, penalties and forfeitures, and all moneys which may be collected or received by any officer of the City and County or any department thereof, in his official capacity, for the performance of any official duty, and all moneys accruing to the City and County from any source, and all moneys directed by law or this Charter to be paid or deposited in the treasury, shall be paid into the treasury. All officers or persons collecting or receiving such moneys must pay the same into the treasury. No officer or person other than the Treasurer shall pay out or disburse such moneys, or any part thereof, upon any allowance, claim or demand.

References. See infra, sec. 3 of this chapter, as to fees. As to the Unapportioned Fee Fund, see, post, secs. 4, 10 and 11 of this chapter.

Return of forfeited bail-moneys. That it is the duty of the city to return bail-moneys declared forfeited by the courts under misapprehension of facts, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 23.

Return of money paid as fees to county officer. There seems to be no provision of law under which the Board of Supervisors may be required to return money voluntarily paid as fees to a county officer: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 365.

What moneys go into treasury. Unapportioned Fee Fund. Whenever any officer, deputy, assistant, clerk, or employee receives compensation for any office service, the same must go into the treasury and become a part of the Unapportioned Fee Fund. Whenever any such person receives money which, according to the law, he must expend in the course of his duty, and which does not constitute any part of any fee or compensation for service rendered, said money does not go into the treasury and become a part of such fund: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 122, 128.

Under the provisions of this chapter, all fees or compensation, other than salaries fixed by law, received by officers of the City and County for official services, go into the municipal treasury: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 122.

Payment for services outside of official duties. Under secs. 1, 2 and 3 of this chapter, the Board of Supervisors has power to pay claims of city officials for services rendered outside of official duties. If the services of a physician, who is a city officer, are, by reason of experiments or examinations made, regarded as valuable on a matter totally dissociated from his official work, he is entitled to compensation therefor: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 343, 344.

Sec. 2. No fees allowed to salaried officers or employees.

Sec. 2. Salaried officers shall not receive nor accept any fee, payment, or compensation directly or indirectly, for any services performed by them in their official capacity, nor any fee, payment, or compensation, for any official service performed by any of their deputies, clerks, or employees, whether performed during or after official business hours. No deputy, clerk, or employee of such officers shall receive or accept any fee, compensation or payment, other than his salary as now or hereafter fixed by law, for any work or service performed by him of any official nature, or under color of office, whether performed during or after official business hours.

Theory of Charter. The Charter was drafted upon the theory that the salaries provided for the various City and County officers were in full compensation for all services: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 469, 470.

Sec. 3. All fees to be paid to Treasurer.

Sec. 3. Every fee, commission, percentage, allowance, or other compensation authorized by law to be charged, received, or collected by any officer for any official service, must be paid by the officer receiving the same to the Treasurer in the manner herein provided.

Reference. See supra, sec. 2 of this chapter, note.

Sec. 4. Daily delivery of fees to Treasurer. Receipt of Treasurer. Unapportioned Fee Fund.

Sec. 4. It shall be the duty of every officer authorized by law to charge, receive or collect any fee, commission, percentage, allowance, or compensation for the performance of any official service or duty of any kind or nature, or rendered in any official capacity, or by reason of any official duty or employment, to deliver the same to the Treasurer at the expiration of each business day. The Treasurer shall thereupon deliver to such officer a receipt for the money so paid, which shall show the amount of money received, the day and hour when paid, the name of the officer paying the same, the nature of the service performed, and the name and official designation of the person by whom the service was performed; and like entries shall be made upon the stub of such receipt, which shall be kept by the Treasurer. The Treasurer shall place all such moneys in a fund to be designated the "Unapportioned Fee Fund," which is hereby created, and shall keep such fund as other funds in the treasury are kept, and shall be liable on his official bond for all money so received.

Sec. 5. Official receipts to be bound into books.

Sec. 5. The Auditor or other proper officer must prepare and deliver from time to time to the Treasurer, and to every officer authorized by law to charge any fee, commission, percentage, allowance, or compensation, for the performance of any official service or duty, as many official receipts as may be required, charging therewith the Treasurer or other officer receiving them. Such official receipts must be bound into books containing not less than one hundred such receipts, and numbered consecutively, beginning with number one in each class required for each officer for each fiscal year, and provided with a stub corresponding in number with receipt. When the books containing receipts are exhausted by the officer receiving them, he shall return the stubs thereof to the Auditor or other proper officer, in whose custody they shall remain thereafter.

Sec. 6. Treasurer's receipts.

Sec. 6. When a receipt as herein provided is issued by the Treasurer he must state therein the date of payment, the name of the person making the payment, the amount of such payment, the nature of the service for which the charge is made, and the name and official designation of the officer performing the service, and shall make corresponding entries on the stub of each receipt.

References. That Auditor and Treasurer must receipt for money, see **Kerr's Cyc. Pol. Code,** § 4146.

Sec. 7. Receipts of other officers.

Sec. 7. When any receipt is issued by any officer other than the Treasurer as herein provided, he shall state therein the day and hour of the delivery to him of the Treasurer's receipt, the nature of the service therein described, and the amount charged therefor, and the name of the person by whom such receipt is delivered to him, and shall make corresponding entries on the stub to which such receipt is attached.

Sec. 8. Treasurer's monthly report. Monthly exhibit.

Sec. 8. On the first day of each month the Treasurer must make to the Auditor a report under oath of all moneys received by him during the preceding month, showing the date and number of the receipt on which the money was received, the amount of each payment, by whom paid, the nature of the service, and the name and official designation of the officer performing the service. At the same time, or oftener, if required by the Auditor, the Treasurer shall exhibit to the Auditor all official receipts received by him during the previous month, and all official receipts remaining in his hands, unused or not issued, at the close of business on the last day of the preceding month.

References. As to monthly settlements between Auditor and Treasurer, see **Kerr's Cyc. Pol. Code,** § 4154.

Sec. 9. Monthly reports and exhibits of officers.

Sec. 9. On the first day of each month every officer authorized by law to charge any fee, commission, percentage, allowance or compensation, must make to the Auditor a report under oath of all official receipts issued by him during the preceding month, showing the date and number of each receipt, to whom issued, the nature of the service for which the charge was made, and the amount of such charge; and must at the same time, or oftener, if required, exhibit to the Auditor, or other proper officer, all the Treasurer's receipts deposited with him during the preceding month, and all receipts remaining in his hands, unused or not issued, at the close of business on the last day of each preceding month.

Sec. 10. Settlement of accounts.

Sec. 10. Upon receiving the reports prescribed by sections eight and nine of this Chapter, the Auditor shall examine and settle the accounts of each officer, and apportion such moneys to the fund or funds to which they are appropriated by law, and certify such apportionment to the Treasurer, who shall thereupon transfer from the "Unapportioned Fee Fund" the amounts so certified, and credit each fund entitled thereto with the proper amount so apportioned.

Sec. 11. Mileage. Monthly statements. Payment of mileage. No double allowance.

Sec. 11. Every officer who is by law allowed to charge and collect mileage for the service of process, or other like service, shall at the end of each month, prepare and deliver to the Auditor a statement showing each process served, the title of the cause, the name of the deputy or other subordinate officer who made the service, the number of miles actually traveled in making such service, the exact day when such service was made, and between what hours of the day, and such statement shall be verified by the oath of such officer. The Auditor shall examine such statement, and issue his warrant upon the Treasurer for such amount of money as will reimburse such officer for his lawful expenses in making such service. Such warrant shall be paid by the Treasurer, without further approval, out of the "Unapportioned Fee Fund." No extra mileage shall be charged or allowed for service of two or more processes served on the same trip by the same deputy or deputies, except for extra mileage actually traveled in serving additional process. All mileage charged in violation of this section shall be disallowed by the Auditor, and all amounts disallowed for any reason shall be apportioned as other moneys in the "Unapportioned Fee Fund."

Sec. 12. Employment of extra assistants. Monthly statement. Payment for services.

Sec. 12. When an officer, legally authorized to employ a person other than one of his deputies or assistants at a stated compensation fixed by law, has employed such person, and in pursuance of such employment such person has rendered the service for which he was employed, such officer shall, at the end of each month, prepare and deliver to the Auditor a statement verified by the oath of such officer, showing the case or instance in which such service was performed, for whom performed, the name of the person so employed, by whom the service was performed, the amount of the charge therefor, the time actually employed in performing such service, and the dates of the beginning and ending of the period during which such person was so employed. The Auditor shall thereupon examine such statement, and if he finds the same correct, he shall audit and allow the verified demand of such person so employed and performing the service for the sum or sums so earned by him for such service, and the Treasurer shall pay such demand so audited and allowed, without further approval, out of the "Unapportioned Fee Fund."

Sec. 13. Allowance of salaries fixed by law. Demands against Common-school Fund. Salaries of other employees. All other demands. Demands must show five facts; must contain statement and number.

Sec. 13. The demand of the Auditor for his monthly salary shall be audited and allowed by the Mayor. All other demands on account of salaries fixed by law, ordinance, or this Charter, and made payable out of the treasury, may be allowed by the Auditor without any previous approval. All demands payable out of the Common School Fund must, before they can be allowed or paid, be previously approved by the Board of Education. Demands payable out of the treasury for salaries, wages, or compensation of deputies, clerks, assistants, or employees, in any office or department, must, before they can be audited or paid, be first approved in writing by the officer, board, department or authority under whom, or in which, such demand originated. All other demands payable out of any funds in the treasury, must, before they can be allowed by the Auditor, or recognized, or paid, be first approved by the department, board or officer, in which the same has originated, and in all such cases must be approved by the Supervisors.

Every demand against the City and County shall, in addition to the other entries and indorsements upon the same required by this Charter, show: 1. The ordinance or authorization under which the same was allowed. 2. The name of the board, department or authority authorizing the same. 3. The fiscal year within which the indebtedness was incurred. 4. The appropriation provided to meet the demand. 5. The name of the specific fund out of which the demand is payable. Each demand shall have written or printed upon it a statement that the same can only be paid out of the income and revenue provided, collected and paid into the proper specific fund in the treasury for the fiscal year within which the indebtedness was incurred, and shall refer to Chapter II of this Article, and be numbered with reference to the fund out of which it is payable.

Sec. 14. Failure to render account and settlement. Penalty. Statement of such account; prosecution.

Sec. 14. Whenever any person has, or has received, moneys or other personal property belonging to the City and County, or has been intrusted with the collection, management or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the City and County, and fails to render an account thereof to, and make settlement with, the Treasurer within the time prescribed by law; or, when no particular time is specified, fails to render such account and make such settlement, or who fails to pay into the treasury any moneys belonging to the City and County upon being required to do so by the Auditor, within twenty days after such requisition, the Auditor must state an account with such person, charging twenty-five per centum damages, and interest at the rate of ten per centum per annum from the time of such failure.

A copy of such account in any suit therein is prima facie evidence of the things therein stated. In case the Auditor cannot for want of information state an account, he may in any action brought by him aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the City and County. The City Attorney must prosecute all actions that may be brought under this section within ten days after notification by the Auditor.

CHAPTER IV.

Payment of Claims.

Sec. 1. Monthly payment of salaries. Limitation upon demands. Certain claims may be revived. Subsequent valid demands.

Section 1. The salaries and compensation of all officers, including policemen and employees of all classes, and all teachers in the public schools, and others employed at fixed wages, shall be payable monthly. Any demand upon the treasury accruing under this Charter shall not be paid, but shall be forever barred by limitation of time, unless the same be presented for payment, properly audited, within one month after such demand became due and payable; or, if it be a demand which must be passed and approved by the Supervisors or Board of Education, or by any other Board, then within one month after the first regular meeting of the proper Board held next after the demand accrued; or, unless the Supervisors shall, within six months after the demand accrued as aforesaid, on a careful examination of the facts, resolve that the same is in all respects just and legal, and the presentation of it, as above required, was not in the power either of the original party interested or his agent, or the present holder; in which case they may by ordinance revive such claim; but it shall be barred in the same manner unless presented for payment within twenty days thereafter. No valid demand arising subsequent to the claim which may be revived as aforesaid shall be rendered invalid by reason of such revival exhausting the fund out of which subsequent claims might otherwise be paid. Such revived claim shall take rank as of the day of its revival.

References. See Charter, ante, art. III, chap. II, sec. 6, as to unpaid demands.

Payment of certain claims against city. Effect of amendment to Constitution. The prohibition existing against payment of certain claims for supplies and services furnished the city during past fiscal years, which prevented payment of these claims out of current revenues, was lifted by the amendment of sec. 18, art. XI, of the Constitution. The City and County of San Francisco may now, at any time, pay such claims, with interest at five per cent, out of the income and revenue of any succeeding year or years. This is the measure of the city's power. The city heretofore could not be compelled, nor was it empowered, to pay these claims. It now has the power; but the amendment does not require that they shall be paid out of the funds of any one year. They may be paid at any time out of the income and revenue of any "year or years" succeeding the years when the debts were incurred. The city must pay up to the sum of five hundred thousand dollars (which is considerably above the amount of such claims), but it is not compelled to pay all the claims at one time: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 431, 433.

Same. Permissive in its nature. After the adoption of the amendment to sec. 18, art. XI, of the Constitution, modifying the limitation contained in said section as it originally stood, the defendant, the City and County of San Francisco, paid the amount of the principal for which a judgment had been rendered against it, leaving the interest and costs of suit unpaid, and suit was afterwards brought for the recovery of these unpaid amounts, with interest thereon. The amendment to sec. 18, art. XI, of the Constitution, adopted in 1900, consisted of a proviso added to said section, as follows: "Provided, however, that the City and County of San Francisco may at any time pay the unpaid claims, with interest thereon at the rate of five per cent per annum, for materials furnished to and work done for said City and County during the forty-first, forty-second, forty-third, forty-fourth, and fiftieth fiscal years, and for unpaid teachers' salaries for the fiftieth fiscal year, out of the income and revenue of any succeeding year or years, the amount to be paid in full of said claims not to exceed, in the aggregate, the sum of five hundred thousand dollars, and that no statute of limitations shall apply in any manner to these claims." This amendment removed the limitation formerly imposed upon the city in reference to the payment of certain claims of indebtedness applicable to certain fiscal years and up to a certain aggregate amount. But, from its very terms, the amendment in question is permissive only, giving the city some discretion in allowing and paying the claims referred to, up to the limit prescribed; and the City and County cannot be compelled to pay the judgment, except out of the funds of a particular year named in the original judgment against it: Weaver v. San Francisco, 146 Cal. 728, 732; 81 Pac. Rep. 119.

Same. Consideration of various questions. As to the consideration of various questions arising under the Constitutional amendment of 1900 (sec. 18, art. XI, of the Constitution), permitting payment of unpaid claims out of the funds of any succeeding year, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 431-437.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

CHAPTER I.

The Mayor.

Sec. 1. Qualifications; term; salary. Appointees in Mayor's office; salaries; terms.

Section 1. The chief executive officer of the City and County shall be designated the Mayor. He shall be an elector of the City and County at the time of his election, and must have been such for at least five years next preceding such time. He shall be elected by the people and hold office for two years. He shall receive an annual salary of six thousand dollars. He may appoint a Secretary who shall receive an annual salary of twenty-four hundred dollars; an usher who shall receive an annual salary of nine hundred dollars; and a stenographer and typewriter who shall receive an annual salary of nine hundred dollars. All of said appointees shall hold their positions at the pleasure of the Mayor.

References. That the Mayor is a municipal officer, see Kahn v. Sutro, 114 Cal. 316, 329; 46 Pac. Rep. 87. As to Mayor's duty concerning redemption of bonds, see Charter, ante, art. III, chap. II, sec. 7. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030.

Sec. 2. Mayor's duties. Records of departments. Defalcation in office. Mayor's powers and recommendations; preservation of public order.

Sec. 2. The Mayor shall vigilantly observe the official conduct of all public officers and the manner in which they execute their duties and fulfil their obligations. The books, records and official papers of all departments, officers and persons in the employ of the City and County shall at all times be open to his inspection and examination. He shall take special care that the books and records of all departments, boards, officers and persons are kept in legal and proper form. When any official defalcation or wilful neglect of duty or official misconduct shall come to his knowledge, he shall suspend the delinquent officer or person from office pending an official investigation.

The Mayor shall from time to time recommend to the proper officers of the different departments such measures as he may deem beneficial to public interest. He shall see that the laws of the State and ordinances of the City and County are observed and enforced. He shall have a general supervision over all the departments and public institutions of the City and County, and see that they are honestly, economically and lawfully conducted, and shall have the right to attend the meetings of any of the Boards provided for in this Charter, and offer suggestions at such meetings. He shall take all proper measures for the preservation of public order and the suppression of all riots and tumults, for which purpose he may use and command the police force. If such police force is insufficient, he shall call upon the Governor for military aid in the manner provided by law, so that such riots or tumults may be promptly and effectually suppressed.

Sec. 3. Execution of public contracts and agreements. Failure to report any violation of contracts. Actions to annul forfeited franchises. Power to postpone action on franchises.

Sec. 3. The Mayor shall see that all contracts and agreements with the City and County are faithfully kept and fully performed. It shall be the duty of every officer and person in the employ or service of the City and County, when it shall come to his knowledge that any contract or agreement with the City and County, or with any officer or department thereof, or relating to the business of any office, has been or is about to be violated by the other contracting party, forthwith to report to the Mayor all facts and information within his possession concerning such matter. A wilful failure to do so shall be cause for the removal of such officer or employee. The Mayor shall give a certificate on demand to any person reporting such facts and information that he has done so, and such certificate shall be evidence in exoneration from a charge of neglect of duty.

The Mayor must institute such actions or proceedings as may be necessary to revoke, cancel or annul all franchises that may have been granted by the City and County to any person, company or corporation which have been forfeited in whole or in part or which for any reason are illegal and void and not binding upon the city. The City Attorney on demand of the Mayor must institute and prosecute the necessary actions to enforce the provisions of this section.

The Mayor shall have power to postpone final action on any franchise that may be passed by the Supervisors until such proposed franchise shall be ratified or rejected by a majority of the votes cast on the question at the next election.

References. Power of City and County to institute an action to secure the forfeiture of a franchise: See People v. Sutter St. Ry. Co., 117 Cal. 604, 612; 49 Pac. Rep. 736. As to forfeiture of franchise, see **Kerr's Cyc. Civ. Code**, § 468.

Sec. 4. Officers and vacancies not provided in Charter.

Sec. 4. The Mayor shall appoint all officers of the City and County whose election or appointment is not otherwise specially provided for in this Charter or by law. When a vacancy occurs in any office, and provision is not otherwise made in this Charter or by law for filling the same, the Mayor shall appoint a suitable person to fill such vacancy, who shall hold office for the remainder of the unexpired term.

References. An office becomes vacant when: See Charter, post, art. XVI, sec. 10. As to filling vacancy in office of Mayor, see, infra, sec. 6 of this chapter.

Sec. 5. Ex officio President of Supervisors.

Sec. 5. The Mayor shall be President of the Board of Supervisors by virtue of his office. He may call extra sessions of the Board, and shall communicate to them in writing the objects for which they have been convened; and their acts at such sessions shall be confined to such objects.

References. Presiding officer of Board of Supervisors: See Charter, ante, art. II, chap. I, sec. 5.

Sec. 6. President pro tempore. Vacancy in Mayoralty.

Sec. 6. When and so long as the Mayor is temporarily unable to perform his duties, a member of the Board shall be chosen President pro tempore, who shall act as such Mayor. When a vacancy occurs in the office of Mayor, it shall be filled for the unexpired term by the Supervisors.

References. Office becomes vacant when: See, ante, sec. 4 of this chapter; Charter, post, art. XVI, sec. 10; **Kerr's Cyc. Pol. Code,** § 996. Whenever an officer has been convicted of a felony, etc., the trial judge must give notice thereof to the officer empowered to fill the vacancy: See **Kerr's Cyc. Pol. Code,** § 997.

CHAPTER II.

The Auditor.

Sec. 1. Qualifications; term; salary; duties; powers.

Section 1. The head of the Finance Department of the City and County shall be designated the Auditor. He shall be an elector of the City and County at the time of his election and must have been such for at least five years next preceding such time. He shall be elected by the people and hold office for two years. He shall receive an annual salary of four thousand dollars. The Auditor must always know the exact condition of the treasury and every demand upon it. He shall be in personal attendance at his office daily during office hours. He shall be the general accountant of the City and County, and shall receive and preserve in his office all accounts, books, vouchers, documents and papers relating to the accounts and contracts of the City and County, its debts, revenues and other financial affairs. He shall give information as to the exact condition of the treasury and of every appropriation and fund thereof, upon demand of the Mayor, the Supervisors, or any committee or members thereof.

References. Auditor's duties, see Charter, ante, art. III, chap. III, secs. 5-14. Duty of Auditor as to redemption of bonds: See Charter, ante, art. III, chap. II, sec. 7. That the Auditor is a municipal officer, see Kahn v. Sutro, 114 Cal. 316, 330; 46 Pac. Rep. 87. As to office hours, see Charter, post, art. XVI, sec. 14; see **Kerr's Cyc. Pol. Code,** § 1030. See Municipal Corporation Act, **Henning's General Laws,** p. 784, § 121, concerning auditor as head of finance department in cities of the first class.

Sec. 2. Appointees. Qualifications; salaries. Auditor's extra clerks. Attorney's fees.

Sec. 2. The Auditor shall appoint a Deputy Auditor, who shall possess the qualifications required of the Auditor, and who shall receive an annual salary of twenty-four hundred dollars. The Auditor may also appoint two assistant deputies who shall each receive an annual salary of fifteen hundred dollars, and two clerks who shall each receive an annual salary of twelve hundred dollars. He may employ such number of extra clerks during the time their services may be necessary for the lawful discharge of his official duties, as the Board of Supervisors may designate. Such extra clerks shall each receive a salary not to exceed one hundred dollars a month for the time they shall be actually employed. The Auditor shall be allowed to expend not exceeding eighteen hundred dollars a year for counsel and attorney's fees.

Position of extra clerk. Limited duration. The position of "extra clerk," created by this section, is of limited duration: Rodrigue v. Rogers, 87 Pac. Rep. 563, 565.

Sec. 3. Demands must be audited.

Sec. 3. The Auditor shall keep an account of all moneys paid into and out of the treasury, and the Treasurer shall pay no money out of the treasury except upon demands approved by the Auditor. Any ordinance or law providing for the payment of any demand out of the treasury or any fund thereof (whether from public funds or from private funds deposited therein) shall always be construed as requiring the auditing of such demand by the Auditor before the same be paid.

Auditor as book-keeper of city. The Auditor is the book-keeper of the city. He must know what moneys are in all the funds, Special Deposit Fund as well as all others, at all times. Each day he must be able to tell what is the condition of the city's finances. Every official who receives money as fees and pays the same into the treasury receives a receipt issued originally in blank to the Treasurer by the Auditor, and a duplicate receipt must be filed by the Treasurer with the Auditor when the original is issued: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 460, 462.

Sec. 4. Demands to be numbered and recorded. Penalty.

Sec. 4. He shall number and keep an official record of all demands audited by him, showing the number, date, amount, name of the original holder, on what account allowed, against what appropriation drawn, out of what fund payable, and, if previously approved or allowed, by what officer, department or board it has been so approved or allowed. It shall be misconduct in office for the Auditor to deliver a demand with his official approval until this requirement shall have been complied with.

Sec. 5. Approval of demands.

Sec. 5. The Auditor shall approve no demand unless the same has been allowed by every officer, board, department and committee required to act thereon.

References. That demands must first be approved by the Board of Supervisors before they can be approved by the Auditor, see Charter, ante, art. II, chap. I, sec. 19.

Sec. 6. Auditor must deduct debits from demands. Demands of negligent officers. Absentees. Auditor may require oaths.

Sec. 6. No demand shall be allowed by the Auditor in favor of any corporation or person in any manner indebted to the City and County, except for taxes not delinquent, without first deducting the amount of any indebtedness of which he has notice; nor in favor of any person having the collection, custody or disbursement of public funds, unless his account has been presented, passed, approved and allowed as herein required; nor in favor of any officer who has neglected to make his official returns or reports in the manner and at the time required by law, ordinance, or the regulations of the Supervisors; nor in favor of any officer who has neglected or refused to comply with any of the provisions of law regulating his duties, nor in favor of any officer or employee for the time he shall have absented himself without legal cause from the duties of his office during office hours. The Auditor must always examine on oath any person receiving a salary from the City and County touching such absence.

The Auditor may require any person presenting for settlement an account or claim for any cause against the City and County to be sworn before him touching such account or claim, and when so sworn, to answer orally as to any facts relative to the justice of such account or claim. Moneys placed in the Special Deposit Fund shall not be subject to the provisions of this section.

References. As to indorsement of Auditor's certificate upon contracts, and weekly report by him of unexpended balances of appropriation for his department, see Charter, ante, art. III, chap. I, sec. 10. That a county auditor, whose duty it is to draw warrants when ordered to do so by the supervisors, cannot, except where the latter have exceeded their powers, assume to set up his judgment against theirs in respect to a matter which the law has left to their discretion, see Babcock v. Goodrich, 47 Cal. 488, 514; Sehorn v. Williams, 110 Cal. 621, 623; 43 Pac. Rep. 8; Lamberson v. Jefferds, 118 Cal. 363, 365; 50 Pac. Rep. 403. That the duty of a county auditor to draw a warrant does not depend upon the fact that there is money in the treasury, see Babcock v. Goodrich, 47 Cal. 488, 508; **Kerr's Cyc. Pol. Code**, § 4076. That a county auditor is not protected by an order of the board of supervisors allowing a claim which cannot be a charge against the county, see Lamberson v. Jefferds, 116 Cal. 492, 494; 48 Pac. Rep. 485. That it is the duty of the county auditor to refuse to draw warrants for illegal demands allowed by a board of supervisors against a county, see Linden v. Case, 46 Cal. 172. That a writ of mandate is the proper remedy against a county auditor who refuses to issue a warrant when directed to do so by the supervisors, see Babcock v. Goodrich, 47 Cal. 488, 508.

Auditor's duty when notified of moneys due city. When the Auditor is notified of moneys due the city, he is forbidden to audit claims presented against the city without deducting the indebtedness: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 620.

Sec. 7. Demands must be indorsed by Auditor. Statements on demands.

Sec. 7. Every demand upon the Treasurer, except the salary of the Auditor, must, before it can be paid, be presented to the Auditor, who shall satisfy himself whether the money is legally due, and its payment authorized by law, and against what appropriation payable and out of what fund it is payable. If he allow it, he shall indorse upon it the word "Allowed," with the name of the fund out of which it is payable, and the date of such allowance, and sign his name thereto. No demand shall be approved, allowed, audited or paid unless it specify each special item, date and amount composing it, and refer by chapter and section to the provisions of this Charter authorizing the same.

Liability for auditing improper demand. That the Auditor of the City and County of San Francisco was, under the Consolidation Act, liable on his official bond for auditing an improper demand, see Von Schmidt v. Widber, 105 Cal. 151, 155; 38 Pac. Rep. 682.

Sec. 8. Register of warrants. Order of demands.

Sec. 8. The Auditor shall keep a register of warrants, showing the funds upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered. He shall not allow any demand out of its order, nor give priority to one demand over another drawn upon the same specific fund, except for the purpose of determining its legality.

CHAPTER III.

The Treasurer.

Sec. 1. Qualifications; term; salary. Appointees; salaries.

Section 1. There shall be a Treasurer of the City and County, who shall be an elector of the City and County at the time of his election and who must have been such for at least five years next preceding such time. He shall be elected by the people, and hold his office for two years. He shall receive an annual salary of four thousand dollars, which shall be in full compensation for all his services. He may appoint a chief deputy who shall receive an annual salary of twenty-four hundred dollars, two assistant deputies who shall each receive an annual salary of eighteen hundred dollars and one clerk who shall receive an annual salary of twelve hundred dollars.

References. Duty of Treasurer as to redemption of bonds: See art. III, chap. II, sec. 7. As to office hours, see Charter, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code**, § 1030. That the Treasurer is a municipal officer, see Kahn v. Sutro, 114 Cal. 316, 330; 46 Pac. Rep. 87.

Sec. 2. Treasurer's powers and duties; daily accounts; monthly statement; penalty for violation. Separate funds; daily attendance; no fees allowed.

Sec. 2. The Treasurer shall receive and safely keep all moneys which shall be paid into the treasury. He shall not lend, exchange, use, nor deposit the same, or any part thereof, to or with any bank, banker or person; nor pay out any part of such moneys, nor allow the same to pass out of his personal custody, except upon demands authorized by law or this Charter, and after they shall have been approved by the Auditor. At the close of business each day he shall take an account of and enter in the proper book the exact amount of money on hand. At the end of every month he shall make and file with the Mayor and publish quarterly in the official newspaper a statement of the condition of the treasury, showing the amounts of receipts into and payments from the treasury, and on what account, and out of what fund. If he violate any of the provisions of this section, he shall be guilty of misconduct in office, and be liable to removal therefrom, and be proceeded against accordingly.

He shall keep the accounts belonging to each fund separate and distinct, and shall in no case pay demands chargeable against one fund out of moneys belonging to another. He shall be in personal attendance at his office each day during office hours. No fees of any kind shall be retained by him, but the same, from whatsoever source received or derived, shall be paid by him into the treasury.

References. That the forcible taking of city moneys from the custody of the City Treasurer, by robbers, is a good defense to an action upon his bond, see City of Healdsburg v. Mulligan, 113 Cal. 205, 219; 45 Pac. Rep. 337. As to construction of **Kerr's Cyc. Penal**

Code, § 424, prohibiting loans and unlawful deposits of public moneys in any bank, see People v. Wilson, 117 Cal. 242; 49 Pac. Rep. 135. As to Special Deposit Fund, see Charter, ante, art. III, chap. II, sec. 4. Requisites of every demand against city: See Charter, ante, art. III, chap. III, sec. 13. As to payment of bail-moneys to Treasurer, see Charter, post, art. V, chap. VIII, sec. 5.

Bail-moneys. Ownership. No withdrawal without Auditor's approval. Bail-moneys are not the property of the city, and neither the general law nor the Charter treats them as such. No Police Court bail-moneys can be legally withdrawn from the treasury, under the Charter, without the approval of the Auditor, upon the order of the court: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 460.

Same. Special Deposit Fund. The Treasurer is created a special custodian of the Special Deposit Fund. Bail-moneys are in the custody of the court, though the Charter has prescribed that the Treasurer shall hold them, just as the Charter has prescribed, in conformity with general law, that the Treasurer shall hold and keep the other moneys which constitute the Special Deposit Fund: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 460, 461.

No payment without Auditor's approval. The Charter has repeatedly required that the Treasurer shall pay no money out of the treasury except upon the demands approved by the Auditor: See Charter, ante, art. IV, chap. II, secs. 3, 7.

Transportation charge against State. The expense of transportation to the State Treasury, of moneys due the State by the City and County of San Francisco, is a proper charge against the State; and the State Controller, therefore, has authority to deduct from the moneys coming to the State the mileage allowed the County Treasurer: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 615.

What tax-moneys are held for owner. Amount paid for taxes, before the tax-rate was fixed, in excess of the amounts due, are held by the Treasurer as custodian for the owner, and the municipality has no interest in their disposition: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 12.

Sec. 3. Joint custody safe; Auditor and Treasurer joint custodians. Coin-bags. Joint custody book; daily balances.

Sec. 3. For the better security of the moneys in the treasury, there shall be provided a joint custody safe in which shall be kept the moneys of the City and County. Said safe shall have two combination locks, neither one of which alone will open the safe. The Treasurer shall have the knowledge of one combination and the Auditor of the other. The Auditor shall be joint custodian with the Treasurer of all funds in the joint custody safe; but shall have no control over them except to open and close the safe in conjunction with the Treasurer, when requested to do so in his official capacity, and shall not be held responsible on his official bond for any shortage which may occur in the treasury.

The gold shall be kept in bags containing twenty thousand dollars each, and the silver in bags containing one thousand dollars each. To each bag shall be attached a tag showing the nature and amount of coin contained therein. Each bag shall be sealed with the seal of each custodian.

There shall be kept in the safe a joint custody book, showing the amount and description of all funds in the safe, and whenever any amounts are withdrawn, the Auditor and Treasurer shall make the proper entry in the joint custody book and initial the same. If on account of sickness or urgent necessity the Auditor is unavoidably absent the Deputy Auditor shall perform his duties. The estimated amount of money required daily for the payment of demands against the treasury shall be taken from the joint custody safe and kept in another safe; and the money therein shall be balanced daily at the close of business hours.

Municipal liability for funds deposited. As to municipal liability for funds deposited with the Treasurer, under **Kerr's Cyc. Code Civ. Proc.**, § 1691, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 418.

Sec. 4. Original and duplicate receipts. Statements thereon.

Sec. 4. The Treasurer, on receiving any money into the treasury, shall make out and sign two receipts for the money. Such receipts shall be alike, except upon the face of one of them shall appear the word ''Original,'' and upon the face of the other shall appear the word ''Duplicate.'' Such receipts shall be numbered and dated, and shall specify the amount, on what account and from what person or officer received, and into what fund or on what account paid. The Treasurer shall enter upon the stubs of such receipts a memorandum of the contents thereof, and deliver the receipt marked ''Original'' to the person or officer paying such money into the treasury, and forthwith deliver the receipt marked ''Duplicate'' to the Auditor, who shall write upon its face the date of its delivery to him, and charge the Treasurer with the amount specified therein, and file the receipt in his office.

Sec. 5. Demands must specify items. Unauthorized demands.

Sec. 5. No demand shall be paid by the Treasurer unless it specify each several item, date and amount composing it, and refer by title, date and section to the law, or ordinance or provision of this Charter authorizing the same; but the allowance or approval of the Auditor, or of the Supervisors, or of any department, board or officer, of any demand which is not authorized by law or this Charter, and which upon its face appears not to have been expressly made payable out of the funds to be charged therewith, shall afford no warrant to the Treasurer for paying the same.

References. That Supervisors must first approve demand before it is paid by Treasurer, see Charter, ante, art. II, chap. I, sec. 19. As to requisites of every demand against the City and County, see art. III, chap. III, sec. 13. Demands for lighting must contain what, see Charter, ante, art. II, chap. III, sec. 6. That, under the Consolidation Act, the Treasurer of the City and County of San Francisco was liable on his official bond for paying a demand void on its face, although it had been approved by the Auditor, see Von Schmidt v. Widber, 105 Cal. 151, 156; 38 Pac. Rep. 682. That it is the duty of the Auditor to refuse to draw warrants for illegal demands, and that, if drawn, it is the duty of the Treasurer to refuse to pay them, see Linden v. Case, 46 Cal. 172.

Sec. 6. Cancelation of paid demands. Register of unpaid demands. Demands payable in order of registration.

Sec. 6. Every lawful demand upon the treasury, audited and allowed as in this Charter required, shall in all cases be paid upon presentation, if there be sufficient money in the treasury applicable to the payment of such demand, and on payment cancelled with a punch, cutting the word "Cancelled" therein, and the proper entry thereof made. If, however, there be not sufficient money so applicable, then it shall be registered in a book kept for that purpose by the Treasurer. Such register shall show the special number given by the Supervisors or other authority, and also by the Auditor to each demand presented, also when presented, the date, amount, name of original holder, and on what account allowed and against what appropriation drawn and out of what specific fund payable. All demands shall be paid in the order of their registration. Each demand upon being so registered shall be returned to the party presenting it, with the indorsement of the word "Registered," and dated and signed by the Treasurer; but the registration of any demand shall not operate to recognize or make valid such demand if incurred contrary to any of the provisions of this Charter.

References. See, supra, section 5 of this chapter. As to mode of redeeming warrants, and registry of warrants, see **Kerr's Cyc. Pol. Code,** §§ 4147, 4148.

CHAPTER IV.

The Assessor.

Sec. 1. Qualifications; term; salary. Appointees; salaries. Extra clerks.

Section 1. There shall be an Assessor of the City and County, who shall be an elector of the City and County at the time of his election, and who must have been such for at least five years next preceding such time. He shall be elected by the people and hold office for four years. He shall receive an annual salary of eight thousand dollars, which shall be in full compensation for all his services. He may appoint a chief deputy, who shall receive an annual salary of twenty-four hundred dollars; one cashier, who shall receive an annual salary of eighteen hundred dollars; six assistant deputies, who shall each receive an annual salary of eighteen hundred dollars; twenty-one clerks, who shall each receive an annual salary of twelve hundred dollars; and during four months of the year not more than one hundred clerks, who shall each be paid at the rate of not more than one hundred dollars a month during the time of their employment. [Amendment approved, and in effect, February 5, 1903.]

References. As to election of Assessor, see **Kerr's Cyc. Pol. Code,** § 4109. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030. As to assessment of property, see **Kerr's Cyc. Pol. Code,** §§ 3627-3671. See Municipal Corporation Act, **Henning's General Laws,** p. 786, § 129, as to election of Assessor in city of the first class. That the assessor is a municipal officer, see Kahn v. Sutro, 114 Cal. 316, 330; 46 Pac. Rep. 87.

Raise of salary. The amendment reads the same as the old section, with this exception: "Eight" was substituted for "four," thus raising the Assessor's salary from four thousand to eight thousand dollars a year.

Construction of old section. Salary, etc. The City and County of San Francisco was authorized, by the Constitution, sec. 8½, art. XI, to fix the compensation of County Auditors, and to provide for the number of deputies that each shall have, and for the compensation payable to each of such deputies; and, in pursuance of such authority, the salary of the Assessor and compensation of the deputies has been fixed as above stated: Matter of Dodge, 135 Cal. 512, 515; 67 Pac. Rep. 973.

Sec. 2. Duties.

Sec. 2. The Assessor shall assess all taxable property within the City and County at the time and in the manner prescribed by the general laws of the State.

References. As to assessment of property, see **Kerr's Cyc. Pol. Code,** §§ 3627-3671.

Bonds secured by mortgage. Where the property of a railroad, or other quasi-public corporation of this State, has been mortgaged for the payment of bonds, and has been, or will be, assessed, for purposes of taxation, to the railroad company, or such other corporation, at its full cash value, without deduction of the debts secured thereon, such bonds, for the purposes of taxation, are not assessable to the holders of them. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, for the purposes of assessment and taxation, must be deemed and treated as an interest in the property affected thereby: Germania Trust Co. v. San Francisco, 128 Cal. 589, 592, 594; 61 Pac. Rep. 178; Estate of Pichoir, 128 Cal. 615; 61 Pac. Rep. 1130.

Consigned goods intended for sale are taxable, if coming from a sister State: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 62.

Foreign railroad bonds. Foreign railroad bonds, the property of a deceased resident of this State, which have been distributed to two trustees named in the will, are taxable at the domicile of the trustees, though such bonds have been kept in a city without the State. Whatever interest a resident trustee has in the bonds, though they have been kept in the joint names of both the trustees, are taxable in this State to the extent that such resident trustee has a legal interest in such bonds: Mackay v. San Francisco, 128 Cal. 678, 681, 687; 61 Pac. Rep. 382.

Foreign railroad corporation bonds, owned by resident of this State, or his executors, are taxable in this State, though such bonds have never been physically present within this State. Such bonds, in contemplation of law, are within the State because of the principle that intangible personal property has no situs apart from the domicile of the owner; and neither the fact that they are kept out of the State, nor that they are negotiable in character, can affect the rule that they have locality for purposes of taxation at the place where they are held — that is, owned: Estate of Fair, 128 Cal. 607, 612, 613; 61 Pac. Rep. 184.

Franchises, assessment of. A franchise to be a corporation is property, and may be assessed as such; but the manner in which its value shall be assessed, and the rate, are merely matters of legislative discretion, except as controlled by the organic law of the State: Bank of California v. San Francisco, 142 Cal. 276, 282; 75 Pac. Rep. 832.

While certain franchises mentioned in **Kerr's Cyc. Pol. Code,** § 3628, must be assessed in the county in which the corporation has its principal place of business, a franchise exercised under sec. 19, art. XI, of the Constitution can be assessed only in the county where it is locally situated. This applies to the corporate franchise of a gas or electric light company to lay pipes or to erect poles in or along the streets of a city, and to supply the inhabitants thereof with artificial light: Stockton Gas and Electric Co. v. San Joaquin County, 148 Cal. 313; 83 Pac. Rep. 54; and of a water company to use the streets and thoroughfares of a city in laying down pipes and conduits therein, and supplying such city and its inhabitants with water, and charging rates therefor: San Francisco v. Oakland Water Co., 148 Cal. 331; 83 Pac. Rep. 61.

Goods in bonded warehouses, if imported or reimported from a foreign country, or if intended for exportation to a foreign country, or if in transit to another State, while owned by the importer and in original packages, are not subject to taxation. All other goods in bonded warehouses are taxable in this State: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 62.

Goods in transit are not subject to assessment in this City and County: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 44.

Household furniture of an army or navy officer residing in the City and County of San Francisco is liable to taxation, where such property is not within army quarters: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 221.

Imported goods. Goods imported from a foreign country, while in the hands of the importer and in original packages, are exempt from State taxes: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 62.

National bank property. Personal property of a national bank cannot be directly assessed for taxation by State authorities: People v. National Bank, 123 Cal. 53; 55 Pac. Rep. 685.

Seats on exchanges. Seats on the San Francisco Stock and Bond Exchange are not subject to taxation: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 83; Lowenberg v. Greenebaum, 99 Cal. 162; 33 Pac. Rep. 794.

A seat on the San Francisco Produce Exchange is not taxable property: San Francisco v. Wagenheim, 37 Pac. Rep. 221.

Shares of stock of foreign corporations. If, upon the death of a testator, he leaves shares of stock of foreign corporations, such shares are taxable here, where the certificates are physically in the possession of the executrix here at the date of the assessment: Stanford v. San Francisco, 131 Cal. 34, 36; 63 Pac. Rep. 145.

Where, upon the death of a testator, he left shares of stock of foreign corporations, and bonds, pledged by him as collateral security for advances made prior to his death, they became part of his estate; they are property owned and claimed by the executrix; and to her the law directs the assessment to be made, though the certificates were not within the State nor in the actual possession of the executrix on the tax-day, but were held in pledge in New York City: Stanford v. San Francisco, 131 Cal. 34, 36; 63 Pac. Rep. 145.

Shares of stock of corporations, the tangible property of which is situated and taxed in this State, are not taxable; but shares of stock of corporations, the tangible property of which is situated in another State, may be taxed: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 53, 61.

Mortgages, assessment of. Mortgages held in this State, upon property which is located elsewhere, should be taxed to the resident owner as solvent credits: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 508, 509.

It does not seem to have been the purpose of those who framed the Constitution to say that mortgages, or any other form of security for debt, are not taxable property in this State, when given upon property made exempt from taxation by the State: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 438, 442.

Under the amendment to the Constitution, adopted in 1900, church property is exempt from taxation, but this does not exempt from taxation mortgages given upon such property: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 438, 442.

Ninety-nine-year interest in lands. Those having a ninety-nine-year interest in lands within this City and County, and who are in possession and have the entire beneficial interest in the estate during the year for which the assessment is made, are the persons to whom such estate should be assessed for taxes: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 698, 701.

Street-railroad running into adjacent county. Where part of a street-railroad is in the City and County of San Francisco, and another part of the same road runs into an adjacent county, that part of the road lying within the City and County of San Francisco, together with the franchise to operate it in such City and County, may properly be assessed in such City and County; and such assessment will prevail over one made by the State Board of Equalization, in which it makes a valuation of the entire line of the road, and apportions the same between the adjacent county and the City and County of San Francisco according to the mileage of the road situated in such counties respectively. Sec. 10, art. XIII, of the Constitution, which provides for the assessment by such Board of all "railroads" operated in more than one county, is not to be construed as including "street-railroads," although operated in more than one county: San Francisco etc. Ry. Co. v. Scott, 142 Cal. 222, 223, 232; 75 Pac. Rep. 575.

Vessels, where assessable. A vessel should be assessed at the home port, that is, at the port of permanent registration, or, where there has been no permanent registration, the vessel should be regarded as within the jurisdiction of the assessor at the home port of the owner. Authority given to the captain of a vessel to take out a temporary registry does not effect a change in the situs of the vessel for the purposes of taxation: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 519.

Vessels registered, enrolled, or licensed in another State, and not plying, in whole or part, in the waters of this State, are not subject to taxation, under the statutes of this State, although their owners may reside therein: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 99, 100; see **Kerr's Cyc. Pol. Code,** §§ 3644, 3645.

Deduction from credits, when permissible. The taxpayer on bonds of quasi-public corporations is not entitled to deduct from the assessed value of such bonds such debts as he may owe to bona fide residents of this State. A deduction from credits, under sec. 1, art. XIII, of the Constitution, and **Kerr's Cyc. Pol. Code,** § 3617, is alone permissible when such credits are unsecured by deed of trust or mortgage. Such bonds, therefore, are not such credits as are subject to deduction for debts owing, because such bonds are evidences of indebtedness secured either by deed of trust or mortgage: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 96; see **Kerr's Cyc. Pol. Code,** § 3617.

A savings and loan corporation is not entitled to deduct from its solvent credits the amount of its deposits, such deposits being deemed, for purposes of taxation, an interest in the property of such corporation: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 255, 257.

Receivers' certificates issued by order of a court are solvent credits, and are not subject to the exemption created by sec. 1, art. XIII, of the Constitution, and **Kerr's Cyc. Pol. Code,** § 3617: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 96, 97.

Same. Collateral inheritance tax. The Assessor is not warranted in allowing an estate, having money in bank, to deduct from the same the amount due from the estate to the State as a collateral inheritance tax. The estate is possessed of solvent credits in the amount of its deposit in the bank, for which it should be assessed: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 245, 246.

Enforcement of penalties. Kerr's Cyc. Pol. Code, § 3648, was not intended to be enforced against any one except the offender himself, or his agent. The words of the statute refer only to fraud by the "owner or agent" of the property, and the penalties should be so restricted: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 208, 209.

Penalties fixed by **Kerr's Cyc. Pol. Code,** §§ 3648, 3649, imposing a multiple tax on property for fraud or mistake, can fall only upon the one guilty of the fraud or mistake. They cannot fall upon his estate or heirs: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 247.

Fees of appraisers, how paid. Collateral inheritance taxes. The fees of appraisers appointed by the court for the determination of amounts due for collecting collateral inheritance taxes may be paid out of any funds the Treasurer may have in his hands on account of said inheritance tax: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 165.

Grantee of State. Where property has been sold to the State for delinquent taxes, and afterwards sold by it to third persons, the original owner, upon disposition by the State, at once loses all interest in or control over the property. The grantee of the State thus seems to be the owner to whom the land should be assessed: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 617.

Mistake in name of owner, effect of. Under **Kerr's Cyc. Pol. Code,** § 3628, no mistake in the name of the owner, or supposed owner, of real property renders the assessment thereof invalid. The assessment is not against the owner; it is of the property, and that must be clearly described. The name of the owner of the property assessed is an incidental provision for the sake of convenience, but the failure to give the correct name of the owner is declared, by the statute, not to impair the assessment: Klumpke v. Baker, 131 Cal. 80, 82; 63 Pac. Rep. 676.

Oath, power to administer. It seems that a clerk in the Assessor's office does not have authority to administer the oath required upon the filing of a statement by a property owner: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 183.

Poll-tax, withholding of salary to compel payment of. The State has no power to compel Federal authorities to withhold part of an employee's salary for the payment of poll-tax. The provisions of **Kerr's Cyc. Pol. Code,** §§ 3848, 3849, do not apply in such a case: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 63.

Poll-taxes. Assessor has no right to percentage. Kerr's Cyc. Pol. Code, § 3862, provides: "The assessor, for services rendered in the collection of poll-taxes, shall receive the sum of fifteen per cent; and the collector, for services rendered in the collection of poll-taxes on the delinquent-list (including the publication), shall receive the sum of twenty-five per cent on all delinquent poll-tax collected by him"; but there is a conflict between this provision of the Political Code and the Charter; and it has been held that the Charter provision controls. Under such holding, the Assessor is not entitled to receive to his own use the percentage on poll-taxes fixed by the section of the Code above referred to. The poll-tax is collected by him in his official capacity as Assessor, and for all of his services as Assessor he is fully compensated by way of a fixed salary, and is expressly required by sec. 34, art. XVI, of this Charter, post, to pay "all moneys coming into his hands as such officer, no matter from what source derived or received, into the treasury of the City and County": Matter of Dodge, 135 Cal. 512, 515; 67 Pac. Rep. 973.

Reassessment of escaped property. Property which has escaped assessment in a preceding year, although railroad property, and notwithstanding the fact that there has been no neglect on the part of the person to whom the assessment is made, should be reassessed, whatever may have been the cause of such escape: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 311, 313.

Solvent credits. Change authorized. Loans made by savings and loan societies, secured by stocks and bonds, constitute "solvent credits," and are assessable as such: Savings and Loan Society v. San Francisco, 146 Cal. 673, 676; 80 Pac. Rep. 1086.

In **Kerr's Cyc. Pol. Code,** § 3681, the Board of Equalization may direct certain changes to be made in an assessment, and the Assessor has power, under section 3681 of that Code, at the request of the

Board, to list and assess property which he failed to assess, notwithstanding the time for assessment has passed and the roll is no longer in his possession. The Board, therefore, may authorize him to change the designation or quality of certain personal property from "bonds" to "solvent credits": Savings and Loan Society v. San Francisco, 146 Cal. 673, 674, 675; 80 Pac. Rep. 1086.

Taxable status of property, how fixed. Under sec. 8, art. XIII, of the Constitution, and **Kerr's Cyc. Pol. Code,** §§ 3628 et seq., the taxable status of property is determined by its condition on the first Monday in March, at 12 M.: Dodge v. Nevada Nat. Bank, 109 Fed. Rep. 726.

Warehouseman not exempt from inquiry. A warehouseman is not exempt from inquiry as to the property he may have within his warehouse. This information may be procured, if not given voluntarily, by the procedure laid down in **Kerr's Cyc. Pol. Code,** § 3629. The provisions of **Kerr's Cyc. Penal Code,** §§ 428 and 429, do not apply: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 42, 44.

CHAPTER V.

The Tax Collector.

Sec. 1. Qualifications; term; salary. Appointees; salaries. Extra clerks; compensation.

Section 1. There shall be a Tax Collector of the City and County, who shall be an elector of the City and County at the time of his election and who must have been such for at least five years next preceding such time. He shall be elected by the people and hold office for two years. He shall receive an annual salary of four thousand dollars, which shall be in full compensation for all his services. He may appoint one chief deputy, who shall receive an annual salary of twenty-four hundred dollars; one cashier who shall receive an annual salary of twenty-four hundred dollars; fifteen deputies who shall each receive an annual salary of fifteen hundred dollars, and extra clerks who shall each be paid at the rate of not more than one hundred dollars a month during the time of their employment, but the total amount of payment for such extra clerks shall not exceed thirty-six thousand dollars a year.

References. As to collection of property taxes, see **Kerr's Cyc. Pol. Code,** §§ 3746-3819. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030. That the Tax Collector is a municipal officer, see Kahn v. Sutro, 114 Cal. 316, 330; 46 Pac. Rep. 87. That the Tax Collector has no authority to submit to a court an agreed case involving the validity of a tax, see Bailey v. Johnson, 121 Cal. 562; 54 Pac. Rep. 80.

Construction of section. Eligibility. This provision of the Charter, in reference to qualifications for eligibility to the office of Tax Collector, was established by the legislative authority of the State, and is valid. Under this provision, unless the candidate for the office has the qualifications thus named "at the time of his election," he is not capable of being elected thereto, and will not be entitled to hold the office, even though he received a majority of the votes cast at the election. The rule that if a person is not eligible at the time the votes were cast for him, he will not be entitled to hold the office by reason of becoming subsequently qualified, has never been modified in this State: Sheehan v. Scott, 145 Cal. 684, 686, 688; 79 Pac. Rep. 350; and see Scott v. Sheehan, 145 Cal. 691; 79 Pac. Rep. 691.

Same. Extra clerks. The language of this section clearly indicates that the term of employment of "extra clerks" is limited, and not continuous or permanent: Rodrigue v. Rogers, 87 Pac. Rep. 563, 565.

Extra compensation not to be allowed. The Board of Supervisors is not justified in allowing any demand for fees to any officer of this City and County receiving a salary under the Charter. Hence, it cannot allow compensation to the Tax Collector for compiling the Military Roll, in addition to the annual salary provided for that officer by the Charter: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 469, 472.

Sec. 2. Must collect all licenses. Powers and duties. Must pay all taxes into treasury. Delinquent taxes.

Sec. 2. The Tax Collector must collect all licenses which may at any time be required by law or ordinance to be collected within the City and County. He shall be charged with all taxes levied upon real and personal property within the City and County, upon the final settlement to be made by him according to law, or this Charter. He shall pay into the treasury, without any deduction for commissions, fees or charges of any kind or on any account, the full amount of all taxes, assessments and moneys received by him, and not previously paid over, including all moneys paid under protest, and money received for taxes paid more than once, and for street assessments. He shall also be charged with, and be debtor to the City and County for, the full amount of all taxes due upon the delinquent tax list delivered to him for collection, unless it appear to the satisfaction of the Supervisors expressed by resolution, that it was out of his power to collect the same by levy and sale of property liable to be seized and sold therefor.

References. As to the collection of property taxes, see **Kerr's Cyc. Pol. Code,** §§ 3746-3831. See Municipal Corporation Act, **Henning's General Laws,** p. 786, § 128, concerning the tax collector in city of first class.

Duty of Tax Collector. It is the duty of the Tax Collector to receive valid taxes without requiring penalties, when such taxes were tendered in due time, but at such time were declined: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 292.

It is the duty of the Tax Collector to compile, and of the Clerk of the Board of Supervisors to deliver to the Brigadier-General, the list required by **Kerr's Cyc. Pol. Code,** §§ 1897 and 1898: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 283.

Delinquent taxes, how to be credited when paid. Delinquent taxes, when paid, should be credited, not to the year when collected, but to the year when they should have been paid: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 297.

Power to make deeds. The Tax Collector has power to make deeds to property sold for delinquent taxes prior to the year 1895: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 380, 382.

Publication. List of property to be sold for delinquent taxes. The Charter does not attempt to provide for publishing a list of property to be sold under direction of the State Controller for delinquent taxes. It does not provide that there shall be any publication in that regard whatever. That matter, as well as the other duties of the Tax Collector in such connection, is left to general law. **Kerr's Cyc. Pol. Code,** § 3897, is the only law requiring such publication: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 388, 389.

Sec. 3. Attorney to collect delinquent taxes. Compensation.

Sec. 3. The Tax Collector may appoint an attorney to prosecute actions for the collection of delinquent taxes, and may agree on paying him as compensation therefor a stated percentage out of the amounts recovered; but such percentage shall in no case exceed fifteen per centum of the amounts recovered.

Special counsel unauthorized when. There seems to be no authority for the appointment by the Tax Collector of special counsel to prosecute any suit for unpaid license fees to the City and County of San Francisco: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 503, 504.

Sec. 4. Licenses in charge of Tax Collector.

Sec. 4. He shall examine all persons liable to pay licenses, and see that licenses are taken out and paid for. In the performance of their official duties, he and his deputies shall have the same powers as police officers in serving process and in making arrests. He may demand the exhibition of any license for the current term from any person, firm or corporation engaged or employed in the transaction of any business for which a license is required; and if such person, firm or corporation shall refuse or neglect to exhibit such license, the same may be revoked forthwith by the Tax Collector.

Sec. 5. Auditor to sign licenses. Monthly statement of licenses.

Sec. 5. The Auditor shall from time to time deliver to the Tax Collector such City and County licenses as may be required, and sign the same and charge them to the Tax Collector, specifying in the charge the amounts thereof named in such licenses respectively and the class of licenses, and take receipts therefor, and the Tax Collector shall sign and collect the same. The Tax Collector shall once in every month, and oftener when required by the Auditor, make to the Auditor a report under oath of all licenses sold and on hand, and of all amounts paid to the Treasurer, and shall also in that regard comply with the regulations which may be prescribed by the Supervisors. At the time of making such report, the Tax Collector shall exhibit to the Auditor all licenses on hand and the Treasurer's receipts for all moneys paid into the treasury.

CHAPTER VI.

The Coroner.

Sec. 1. Qualifications; term; salary; duties. Morgue.

Section 1. There shall be a Coroner of the City and County, who shall be an elector of the City and County at the time of his election and who must have been such for at least five years next preceding such election. He shall be elected by the people and hold office for two years. He shall receive an annual salary of four thousand dollars. He shall perform such duties as may be prescribed by law or ordinance. He shall have the control and management of the Morgue of the City and County under such ordinances as the Supervisors may adopt.

References. As to coroner, see **Kerr's Cyc. Pol. Code,** §§ 4285-4292, and **Kerr's Cyc. Penal Code,** §§ 1510-1519. See Municipal Corporation Act, **Henning's General Laws,** p. 787, § 135, concerning the duty of the coroner in city of the first class. That the coroner is a county officer, see Kahn v. Sutro, 114 Cal. 316, 335; 46 Pac. Rep. 87. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030.

Sec. 2. Appointees; salaries.

Sec. 2. He may appoint an autopsy physician who shall receive an annual salary of twenty-four hundred dollars; a chief deputy, who shall receive an annual salary of twenty-four hundred dollars; three assistant deputies who shall each receive an annual salary of fifteen hundred dollars; a stenographer and typewriter who shall receive an annual salary of eighteen hundred dollars; and a messenger who shall receive an annual salary of nine hundred dollars.

CHAPTER VII.

The Recorder.

Sec. 1. Qualifications; term; salary. Appointees; salary. Copyists; compensation.

Section 1. There shall be a Recorder of the City and County, who shall be an elector of the City and County at the time of his election and who must have been such for at least five years next preceding such election. He shall be elected by the people and hold office for two years. He shall receive an annual salary of thirty-six hundred dollars. He may appoint a chief deputy, who shall receive an annual salary of eighteen hundred dollars; two assistant deputies who shall each receive an annual salary of fifteen hundred dollars. He may also appoint as many copyists as he may deem necessary, who shall receive not more than eight cents for each one hundred words actually written; but no copyist shall be paid a greater compensation at this rate than amounts in the aggregate to one hundred dollars a month.

References. As to the Recorder, see **Kerr's Cyc. Pol. Code,** §§ 4234-4247. See Municipal Corporation Act, **Henning's General Laws,** p. 786, § 131, concerning the recorder in city of first class. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030. That the recorder is a county officer, see Kahn v. Sutro, 114 Cal. 316, 335; 46 Pac. Rec. 87. As to authority of the city and county over county officers, see Const., art. XI, sec. 8½, subd. 4.

Sec. 2. Custodian of public records. Duties.

Sec. 2. The Recorder shall take into his custody and safely keep all books, records, maps and papers deposited in his office. Upon demand and payment of the fees prescribed therefor by law or by ordinance, he must furnish to any one applying therefor a copy of any such book, record, map or paper, certified under the hand and seal of his office. When any papers are presented for filing or recording, he or his deputies shall write on the margin of each paper so presented the number of folios, the amount paid for recording the same, and shall number consecutively all instruments and documents filed in his office. He shall also perform all other duties at the time and in the manner prescribed by the general laws of the State.

Public records are "written" if typewritten. If the public records are typewritten, instead of being written by pen, they would doubtless be held to have been "written" in conformity with law: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 430; **Kerr's Cyc. Civ. Code,** § 14; **Kerr's Cyc. Code Civ. Proc.,** § 17.

Right to copy deed by photographing it. All persons are permitted to examine all papers filed in the Recorder's office for recordation, and to make copies thereof; and as the photographing of a deed is but another means of copying it, this may be allowed, so long as it does no injury to the document, and is conducted in the presence of the Recorder: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 164.

ARTICLE V.

LEGAL DEPARTMENT.

CHAPTER I.

The Superior Court Judges.

Sec. 1. Court interpreters.

Section 1. The Judges of the Superior Court of the City and County may appoint not to exceed five interpreters of foreign languages, who shall act as such interpreters in criminal actions and proceedings in all the courts in the City and County, and in examinations before Coroner's juries.

References. Power of Supervisors to provide for payment of compensation to interpreters: See Charter, ante, art. II, chap. II, sec. 1, subd. 20. As to fees of official reporters, see **Kerr's Cyc. Code Civ. Proc.**, § 274. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code**, § 1030.

Supervisors have no power to appoint interpreter. It is not within the power of the Board of Supervisors to appoint an interpreter for the Superior Courts: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 345, 346.

Payment of jurors' fees in criminal cases. That jurors in criminal cases, prosecuted in the Superior Court of the City and County of San Francisco prior to 1901, were not, under the laws then in force, entitled to payment of their fees for such services out of the municipal treasury, see Birch v. Phelan, 127 Cal. 49, 51; 59 Pac. Rep. 209.

Same. Construction of statutes. Prior to the act of March, 1901, adding § 1143 to **Kerr's Cyc. Penal Code**, there was no law authorizing the payment of jurors' fees in criminal cases in the City and County of San Francisco. In 1895 an act was passed (Stats. 1895, p. 267) as to the fees of jurors throughout the State, as follows: "For attendance as a grand juror, or juror in the Superior Court, for each day's attendance, two dollars"; but this act did not repeal the act of February 27, 1866, as to the mode of paying jurors' fees in the City and County of San Francisco. The old law remained in force in San Francisco. There was, therefore, no provision in the statute making the payment of jurors' fees in San Francisco a charge upon the public treasury. The act of March 23, 1901, providing for the payment of trial jurors who had served as such in any city and county after the act of March 28, 1895, violated sec. 31, art. IV, of the State Constitution, which prohibits the legislature from making any gift of any public money, or of anything of value, to any individual or corporation: Powell v. Phelan, 138 Cal. 271, 272, 273; 71 Pac. Rep. 335.

Same. Duty of Auditor. In Kerr's Cyc. Penal Code, § 1143, the board of supervisors of each county, or city and county, is directed to make suitable appropriation for the payment of the fees therein provided for, and the fees of jurors and mileage shall be paid by the treasurer of the county, or city and county, in which the juror's services were rendered, out of the general fund of said county, or city and county, upon warrants drawn by the county auditor upon the written order of the judge of the court in which said juror was in attendance, and the treasurer of such county, or city and county, shall pay said warrants; and it is the duty of the Auditor of the City and County of San Francisco to draw his warrant upon the Treasurer of said City and County for such fees, although a special fund set aside by the Board of Supervisors of such City and County for the payment of such fees in criminal cases has been exhausted: Jackson v. Baehr, 138 Cal. 266, 268, 269, 270; 71 Pac. Rep. 167.

"Fees of jurors for each day's attendance," meaning of. Kerr's Cyc. Penal Code, § 1143, makes provision for payment of the fees of jurors in criminal cases. Under that section the "fees of jurors for each day's attendance" means the attendance of the jurors lawfully summoned and present in court, in answer to the call thereof, whether sworn to try any case or not, and without regard to their qualifications to serve as jurors: Jackson v. Baehr, 138 Cal. 266, 267; 71 Pac. Rep. 167.

Employment of experts by grand jury. Under **Kerr's Cyc. Penal Code,** § 928, the grand jury cannot give employment to more than one expert at a time: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 13.

Sec. 2. Court stenographers; compensation.

Sec. 2. The stenographers in the Criminal Departments of the Superior Court shall each receive an annual salary not exceeding twenty-four hundred dollars which shall be in full compensation for all services including transcription and all stationery used by them.

Stenographers' fees. Paramount law. The general law governing stenographers' fees is superior to the Charter provision: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 205, 206.

CHAPTER II.

The City Attorney.

Sec. 1. Salary; term; qualifications.

Section 1. There shall be an Attorney and Counselor of the City and County, who shall be styled City Attorney, and who shall receive an annual salary of five thousand dollars. He shall be elected by the people and shall hold office for the period of two years. He must be at the time of his election an elector of the City and County and qualified to practice in all the courts of this State, and he must have been so qualified for at least ten years next preceding his election, during five years of which he must have been an actual resident of the City and County. He shall devote his entire time and attention to the duties of his office.

References. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030. That the City Attorney is a municipal officer, see Kahn v. Sutro, 316, 329; 46 Pac. Rep. 87. That a city attorney can claim no other compensation than his salary, for services rendered during his term of office, however efficient and valuable they may be, see Buck v. City of Eureka, 109 Cal. 504, 521; 42 Pac. Rep. 243.

Sec. 2. Duties. Actions. Legal advice. Litigation.

Sec. 2. He must prosecute and defend for the City and County all actions at law or in equity, and all special proceedings for or against the City and County; and whenever any cause of action at law or in equity or by special proceedings exists in favor of the City and County, he shall commence the same when within his knowledge, and if not within his knowledge, when directed to do so by resolution of the Supervisors. He shall give legal advice, in writing, to all officers, boards and commissions named in this Charter, when requested so to do by them, or either of them, in writing, upon questions arising in their separate departments involving the rights or liabilities of the City and County. He shall not settle or dismiss any litigation for or against the City and County under his control unless upon his written recommendation he is ordered to do so by the Mayor and Supervisors.

References. See Municipal Corporation Act. **Henning's General Laws,** p. 789, § 133, concerning city or city and county attorney in city of first class.

Not required to prepare certain ordinance. The provisions of the Charter touching the duties of the City Attorney do not require him to prepare an ordinance for the Board of Supervisors regarding nickel-in-the-slot machines: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 174.

Not required to appear when, unless corporate right is involved. Where the City and County of San Francisco is not named as a party to a proceeding, and none of its rights or liabilities are to be determined by the judgment to be rendered therein, it is not the duty of the City Attorney to appear in the action, either for plaintiff or for defendant, or at all. Neither the Board of Education nor any other board or officer can call for the services of the City Attorney, except in support or protection of some corporate right: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 386, 387.

Sec. 3. Records of city's legal proceedings.

Sec. 3. He shall keep on file in his office all written communications and opinions given by him to any officer, board or department; the briefs and transcripts used in causes wherein he appears; and bound books of record and registry of all actions or proceedings in his charge in which the City and County is interested.

Sec. 4. Delivery of records to successor.

Sec. 4. He shall deliver all books and records, reports, documents, papers, statutes, law books and property of every description in his possession, belonging to his office, or to the City and County, to his successor in office, who shall give him duplicate receipts therefor, one of which he shall file with the Auditor.

Sec. 5. Appointees. Assistants, salaries; clerks, salaries. Detective-work; police-officer. Assistants' and chief clerk's qualifications.

Sec. 5. The City Attorney may appoint four assistants, the first of whom shall receive an annual salary of thirty-six hundred dollars; the second an annual salary of three thousand dollars; the third an annual salary of twenty-four hundred dollars, and the fourth an annual salary of eighteen hundred dollars. He may also appoint a chief clerk, who shall receive an annual salary of eighteen hundred dollars; an assistant clerk who shall receive an annual salary of nine hundred dollars; a stenographer and typewriter who shall receive an annual salary of nine hundred dollars; and a messenger who shall receive an annual salary of nine hundred dollars. An officer of the Police Department shall be permanently detailed by the Chief of Police for the purpose of doing the detective work necessary in preparing and prosecuting the litigation of the office, who shall continue to serve on such detail during the pleasure of the City Attorney. The assistants and the chief clerk must each, at the time of his appointment, be qualified to practice in all the courts of this State, and must have been so qualified at least two years next preceding his appointment. The assistants, clerks, typewriter and messenger shall be appointed by the City Attorney, and shall hold their offices at his pleasure, and the specific duties of each shall be prescribed by him.

CHAPTER III.

The District Attorney.

Sec. 1. Term; qualifications; salary.

Section 1. The District Attorney shall be elected by the people and shall hold office for two years. He shall be an elector of the City and County and must at the time of his election be qualified to practice in all the courts of this State, and must have been so qualified for at least five years next preceding his election. He shall receive an annual salary of five thousand dollars.

References. As to the District Attorney, see **Kerr's Cyc. Pol. Code,** §§ 4256-4259. See Municipal Corporation Act, **Henning's General Laws,** p. 787, § 132, concerning District Attorney in city or city and county of first class. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030. That the District Attorney is a county officer, see Kahn v. Sutro, 114 Cal. 316, 335; 46 Pac. Rep. 87. Duty of, as to collateral inheritance tax: See act of 1905, **Henning's General Laws,** pp. 138, 144, §§ 17, 18. As to authority of city and county over county officers, see Const., art. XI, sec. 8½.

Sec. 2. Powers and duties. Police Court prosecutions. Quarterly statement. Official register. Legal advice.

Sec. 2. The District Attorney shall have all the powers conferred, and shall discharge all the duties imposed upon, the District Attorneys of counties by the general laws of this State, and in addition thereto shall attend, institute and conduct on behalf of the people, all prosecutions cognizable in the Police Court of the City and County. He shall draw all complaints and warrants in said Police Court, prosecute all forfeited recognizances therein, and all actions for the recovery of fines, penalties, and forfeitures accruing to the City and County; deliver receipts for money or property received in his official capacity, and file duplicates therefor with the County Treasurer; file with the Auditor on the first Mondays of January, April, July and October in each year, an itemized statement under oath showing all moneys received by him in his official capacity during the preceding three months; keep a register of his official business in which must be entered a note of every action, whether criminal or civil, prosecuted officially by him, and of the proceedings therein; and give, when required, without fee, advice to the Board of Police Commissioners, the Chief of Police, the Board of Health and the Coroner, upon matters relating to the duties of their respective offices.

Sec. 3. Appointees. Assistants, salaries, duties, qualifications; clerks, salaries.

Sec. 3. He may appoint seven Assistant District Attorneys to aid him in the discharge of his official duties, three of whom shall act as prosecutors in the Superior Court, and shall each receive an annual salary of thirty-six hundred dollars, and four of whom shall act as the prosecuting attorneys of the Police Court, and shall each receive an annual salary of twenty-four hundred dollars. When any of the assistants of the District Attorney acting as such prosecuting attorneys in the Police Court are not actually engaged in work connected with prosecutions therein, they shall be at the call of the District Attorney for any service connected with his department. The assistants must each, at the time of his appointment, be qualified to practice in all the courts of this State, and must have been so qualified for at least two years next preceding his appointment. The District Attorney may also appoint one chief clerk, who shall receive an annual salary of eighteen hundred dollars; one assistant clerk, who shall receive an annual salary of twelve hundred dollars; and one stenographer and typewriter who shall receive an annual salary of nine hundred dollars.

References. As to power of supervisors to appoint special counsel under the County Government Act, see County of Modoc v. Spencer, 103 Cal. 498; 37 Pac. Rep. 483; Merriam v. Barnum, 116 Cal. 619; 48 Pac. Rep. 727; Lamberson v. Jefferds, 118 Cal. 363; 50 Pac. Rep. 403; Merced County v. Cook, 120 Cal. 275; 52 Pac. Rep. 721.

Effect of restrictions as to funds and payment. Restrictions which the organic act imposes upon the setting aside of funds and payment of money out of the treasury do not apply to the payment of demands arising out of liabilities which are placed by law beyond the control of the board of supervisors: Harrison v. Horton, Cal. App. Dec., April 18, 1907, vol. 4, p. 485; 90 Pac. Rep. 716.

Salary of additional District Attorney must be paid. If an additional, or eighth, attorney be, under authority of an ordinance, appointed under sec. 35, art. XVI, post, the person so appointed is an officer possessing the same powers and authority as the seven other Assistant District Attorneys originally appointed, and is entitled to have his salary paid out of the General Fund. Such payment is not prohibited by secs. 6 and 7, chap. I, art. III, of the Charter. The Charter provides that "the Board of Supervisors shall authorize the disbursement of all public moneys except as otherwise specifically provided in this Charter": Sec. 15, chap. I, art. III. But an Assistant District Attorney is in fact a Deputy District Attorney, and the appointment of the additional Assistant District Attorney, at a fixed salary, is of the same weight and dignity as if the ordinance had been embodied in the Charter at the time of its adoption. The Charter specifically provides for the salary of the District Attorney and his seven assistants, and when the said ordinance is passed with the direct authorization of the Supervisors, the salary must be paid, notwithstanding the Board did not specifically set apart a fund sufficient for its payment in full. The Board has nothing to do with the payment of salaries of officers of the city. Such salaries are fixed by law, and must be paid: Harrison v. Horton, Cal. App. Dec., April 18, 1907, vol. 4, p. 485; 90 Pac. Rep. 716.

Sec. 4. Property at execution sales.

Sec. 4. The District Attorney may, in the name of the City and County, bid for and purchase property at execution sales under judgments for the recovery of fines, penalties or forfeitures accruing to the City and County.

CHAPTER IV.

The Public Administrator.

Sec. 1. Powers and duties. Allowed fees for compensation.

Section 1. The Public Administrator shall be elected by the people, and he shall hold office for two years. He shall have all the powers conferred, and shall discharge all the duties imposed upon, the Public Administrators of counties by the general laws of this State, except as in this Charter otherwise specifically provided. He shall be entitled to all such fees as may be allowed by law to the Public Administrators of the counties of the State in full compensation for all his services.

References. As to the Public Administrator, see **Kerr's Cyc. Code Civ. Proc.,** §§ 1726, 1744. See Municipal Corporation Act, **Henning's General Laws,** p. 787, § 134, concerning Public Administrator of city or city and county of the first class. That he is a county officer, see Kahn v. Sutro, 114 Cal. 316, 335; 46 Pac. Rep. 87. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030. As to authority of the City and County over county officers, see Const., art. XI, sec. 8½.

CHAPTER V.

The County Clerk.

Sec. 1. Term; powers and duties. Clerk of Police Court. Salary.

Section 1. The County Clerk shall be elected by the people and shall hold office for two years. He shall have all the powers conferred, and shall discharge all the duties imposed upon, the County Clerks of counties by the general laws of this State, and in addition thereto shall attend and act as Clerk of the Police Court, keep the dockets and registers thereof, and take charge and safely keep all books, papers and records which may be filed or deposited in his office pertaining to the Police Court. He shall receive an annual salary of four thousand dollars.

References. As to the County Clerk, see **Kerr's Cyc. Pol. Code,** §§ 4204-4205. See Municipal Corporation Act, **Henning's General Laws,** p. 785, §§ 124-127, concerning City and County Clerk of city of first class. That the County Clerk is a county officer, see Kahn v. Sutro, 114 Cal. 316, 329; 46 Pac. Rep. 87. Concerning his duties as to collateral inheritance taxes, see **Henning's General Laws,** p. 145, § 19. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030. As to authority of the City and County over county officers, see Const., art. XI, sec. 8½.

Duty as to recording sales, etc., in foreclosure or partition cases. It is not the duty of the County Clerk to record, in the execution-book, returns of sales of real estate made in foreclosure or partition cases, where there has been no actual levy, nor any necessity for a levy: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 217, 218.

Sec. 2. Appointees. Chief Register Clerk, salary; Cashier, salary; Court Room Clerks, salary; Register Clerks, salary; Copyists, salary; Police Court Clerks, salary.

Sec. 2. To aid him in the discharge of his official duties, the County Clerk may appoint a Chief Register Clerk, who shall receive an annual salary of twenty-four hundred dollars; a Cashier, who shall receive an annual salary of eighteen hundred dollars; twelve Court Room Clerks for the Superior Court who shall each receive an annual salary of fifteen hundred dollars; five Register Clerks, who shall each receive an annual salary of eighteen hundred dollars; ten Assistant Register Clerks, who shall each receive an annual salary of fifteen hundred dollars; sixteen Copyists, who shall each receive an annual salary of twelve hundred dollars; and four Clerks for the Police Court, who shall each receive an annual salary of fifteen hundred dollars.

Sec. 3. Copies of papers; charges. Certification of papers; charges.

Sec. 3. For copies of papers furnished and certified by him, he shall charge not more than eight cents for each one hundred words. For certifying copies, which are not prepared by him, he shall be entitled to charge twenty-five cents, and also forty cents an hour for the time exceeding one hour necessarily occupied in comparing such copies. He must certify all papers presented to him which are copies of any document, paper or record, or portions thereof, in his custody.

CHAPTER VI.

The Sheriff.

Sec. 1. Term; salary; powers and duties.

Section 1. The Sheriff shall be elected by the people, and he shall hold office for two years. He shall receive an annual salary of eight thousand dollars, which shall be in full compensation for all official services required of him by law; but said salary shall be exclusive of the compensation received by him from the State for the delivery of prisoners to the State prisons, and insane persons to the State asylums for the insane. He shall have all the powers conferred, and shall discharge all the duties imposed upon, the Sheriffs of counties by the general laws of this State.

References. As to the Sheriff, see **Kerr's Cyc. Pol. Code,** §§ 4175-4193. See Municipal Corporation Act, **Henning's General Laws,** p. 786, § 130, concerning Sheriffs in city or city and county of the first class. That the Sheriff is a county officer, see Kahn v. Sutro, 114 Cal. 316, 329; 46 Pac. Rep. 87. As to office hours, see Charter, post, art. XVI, sec. 14; **Kerr's Cyc. Pol. Code,** § 1030. As to authority of the City and County over county officers, see Const., art. XI, sec. 8½. That arrest must precede escape or rescue, see **Kerr's Cyc. Penal Code,** § 854, notes. Cases designated in which elisors may act: See **Kerr's Cyc. Pol. Code,** § 4192. That writs "unexecuted in whole or in part" shall be executed by the sheriff's successor in office, see Wood v. Lowden, 117 Cal. 232, 236; 49 Pac. Rep. 132.

Construction of section. The power conferred by this section was evidently intended to refer to the Sheriff's power as the chief peace officer of the county, and not intended to make him independent of the general provisions of the Charter as to supplies generally, which matter is controlled by sec. 1, chap. III, art. II, ante: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 688.

Dispossession of tenant. Obstruction of street. In dispossessing a tenant, the Sheriff has no right to permit the tenant's personal property to remain on the sidewalk, and there become an illegal obstruction, a nuisance. It is the duty of the city to keep its streets clear: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 631.

Sec. 2. Appointees. Under-Sheriff, salary; Attorney, salary; Bookkeepers, salaries; Office Deputies, salary; Bailiffs, salary; Jailers, salaries; Guards, salary; Matron, salary; Commissary, salary; Driver, salary; Branch Jails Book-keeper, salary.

Sec. 2. He may appoint the following deputies and employees, who shall each respectively receive the following annual salaries:

One Under Sheriff, twenty-four hundred dollars; one Attorney, eighteen hundred dollars; one Chief Bookkeeper, eighteen hundred dollars; two Assistant Bookkeepers, fifteen hundred dollars; ten Office Deputies, fifteen hundred dollars; fourteen Bailiffs, twelve hundred dollars; one Chief Jailer at Branch Jail Number One, eighteen hundred dollars; ten Jailers at Branch Jail Number One, twelve hundred dollars; one Superintendent of Branch Jails Numbers Two and Three, eighteen hundred dollars; sixteen Guards at Branch Jail Number Two, six hundred dollars; one Matron at Branch Jail Number Three, nine hundred dollars; six Guards at Branch Jail Number Three, six hundred dollars; one Commissary to act for all jails, fifteen hundred dollars; one Driver of Van, nine hundred dollars; and one Bookkeeper for all said Branch Jails, fifteen hundred dollars.

Sec. 3. Duties of deputies.

Sec. 3. The Sheriff may designate the services to be performed by his deputies.

CHAPTER VII.

The Justices' Courts.

Sec. 1. Justices of the Peace, salary; Presiding Justice, salary. Appoint Chief Clerk, term, salary; deputies, salary.

Section 1. The Justices of the Peace shall each receive an annual salary of twenty-four hundred dollars, except the Presiding Justice, who shall receive an annual salary of twenty-seven hundred dollars. They shall appoint a Chief Clerk who shall hold office for two years, and receive an annual salary of twenty-four hundred dollars. The Chief Clerk may appoint five deputies, each of whom shall receive an annual salary of twelve hundred dollars.

References. As to Justices' Courts, see **Kerr's Cyc. Code Civ. Proc.,** §§ 85-115, 832, 926. See Municipal Corporation Act, **Henning's Gen-**

eral Laws, pp. 810-815, 817, §§ 213-228, 241, concerning Justices of the Peace in city of the first class. That Justices of the Peace are not county officers, see Kahn v. Sutro, 114 Cal. 316, 333; 46 Pac. Rep. 87. That laws "regulating the jurisdiction and duties of Justices of the Peace" must be general in their nature, see Const., art. IV, sec. 25; Kahn v. Sutro, 114 Cal. 316, 333; 46 Pac. Rep. 87. That a freeholders' charter cannot fix the powers, duties, or responsibilities of Justices of the Peace, but that this must be done by a "law," under sec. 11, art. VI, of the Constitution, see People v. Sands, 102 Cal. 12; 36 Pac. Rep. 404.

Terms of city Justices of the Peace. Legislature has right to fix. The legislature has power, under sec. 11, art. VI, of the Constitution, to fix the terms of Justices of the Peace generally, including city Justices of the Peace. Hence, section 58 of the County Government Act of 1897, **Henning's General Laws**, p. 211, extending the term of city Justices of the Peace to four years was, therefore, constitutional, and had the effect of repealing § 110 of **Kerr's Cyc. Code Civ. Proc.** The city Justices of the Peace do not come, or at least do not altogether come, within the category of county or township officers; but it is equally clear that they do not come altogether within that of city officers. They cannot, therefore, strictly speaking, be said to be either county officers or city officers, for that would imply that they were exclusively such; but, without much impropriety, they may be said to be either. More accurately speaking, they, as well as county justices, form part of the judicial system of the State; and both come equally within the provisions of sec. 11, art. VI, of the Constitution, which authorizes the legislature to determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and to fix by law their powers, duties, and responsibilities. It does not follow, however, from the peculiar nature of their offices, that Justices of the Peace or other judicial officers do not constitute part of the city or county governments. Cities, though, for certain purposes, distinct political entities, still remain part of the counties in which they are situated; and many of the functions of county officers, such as sheriffs, recorders, assessors, etc., are exercised within their limits: People v. Cobb, 133 Cal. 74, 76, 77; 65 Pac. Rep. 325.

Salaries of Justices. Kerr's Cyc. Code Civ. Proc., § 97, relating to salaries of Justices of the Peace in every city and county of more than one hundred thousand population, was amended by act of February 15, 1905, Stats. 1905, p. 9.

CHAPTER VIII.

The Police Court.

Sec. 1. Four Judges; term; salary; qualifications. Departments. Presiding Judge. Sessions of court.

Section 1. There is hereby created and established in and for the City and County of San Francisco a Court to be known as the Police Court of the City and County of San

Francisco. Said Court shall consist of four Judges, who shall be elected by the people and hold office for four years. They shall each receive an annual salary of thirty-six hundred dollars. They shall be electors of the City and County at the time of their election, and must have been such for at least five years next preceding such time. No person shall be eligible to the office of Judge of the Judge Court who is not at the time of his election qualified to practice in all the Courts of this State, and who has not been so qualified for at least five years next preceding his election. The Court shall be divided into departments known as Department Number One, Department Number Two, Department Number Three, and Department Number Four. The Judges of such Court may hold as many sessions of the Court at the same time as there are Judges thereof. The Judges who shall be elected at the first election under this Charter shall so classify themselves by lot that two of them shall go out of office in two years and two of them in four years.

They shall choose from their number a Presiding Judge who shall serve for one year. The Presiding Judge shall assign the Judges to their respective departments; but any of the Judges may preside in any of the departments in the absence or inability of the Judge regularly assigned thereto.

The judgments, orders and proceedings of any session of the Court held by any one or more of the Judges shall be equally effectual as if all the Judges had presided at such session.

References. As to Police Courts, see **Kerr's Cyc. Code Civ. Proc.,** §§ 929-933; **Kerr's Cyc. Pol. Code,** §§ 4424-4432; and Consolidation Act, Stats. 1856, p. 145, secs. 16-22. See Municipal Corporation Act, **Henning's General Laws,** pp. 815-818, §§ 229-246, concerning Police Courts in city of the first class.

Sec. 2. Jurisdiction. First — Violation of ordinances. Second — Other misdemeanors and felonies. Third — Powers in criminal actions.

Jurisdiction.

Sec. 2. The Police Court of the City and County of San Francisco shall have:

Violation of ordinances.

First—Exclusive jurisdiction of all prosecutions for the violation of ordinances of the Board of Supervisors.

References. As to effect of vesting Police Courts with exclusive jurisdiction, see note to the next subdivision of this section.

Other misdemeanors and felonies.

Second—Concurrent jurisdiction with the Superior Court of all other misdemeanors and of the examination of all felonies committed in the City and County.

References. That Police Judges are magistrates, see People v. Crespi, 115 Cal. 50; 46 Pac. Rep. 863. That the expression, "examination of all felonies," includes the examination of misdemeanors, see People v. Crespi, 115 Cal. 50; 46 Pac. Rep. 863.

Construction of section. Invalidity. Criminal libel. This subdivision is invalid, and fails to confer jurisdiction upon the Police Court of the City and County of San Francisco to try a prosecution for criminal libel. That this is an offense against the State law, see **Kerr's Cyc. Penal Code,** §§ 248, 249; and the trial and punishment of offenses defined by the law of the State is not a "municipal affair." Jurisdiction of such offenses may be conferred upon Police Courts by act of the legislature, but cannot be conferred by a special freeholders' charter, and certainly not in a manner which will impair the operation of general laws. Under the Constitutional provision, sec. 5, art. VI, it is evident that the jurisdiction conferred upon the Superior Court in cases of misdemeanors is exercised by it exclusively, or not at all. It is a provisional jurisdiction, which, however, must be exercised solely by that court until the legislature, or equally competent authority, has provided for its exercise by some inferior court. When provision is so made transferring this jurisdiction to some other court, the Superior Court is ousted of its jurisdiction, ipso facto. And, as it must possess original jurisdiction in the absence of any transfer of jurisdiction to an inferior court, and loses its jurisdiction entirely by the transfer, it is clear that it cannot have concurrent jurisdiction with any other court in any case of misdemeanor. Hence, it necessarily follows that if the Superior Court cannot have concurrent jurisdiction with the Police Courts of the City and County of San Francisco in any case of misdemeanor, the attempt of the freeholders to confer concurrent jurisdiction is one to which legal effect cannot be given. Nor will the court treat the words "concurrent . . . with the Superior Court," inserted by the freeholders under either misapprehension of fact or misconception of law, as surplusage, and construe the rest of the section to read that said Police Court shall have "jurisdiction of all other misdemeanors": Robert v. Police Court, 148 Cal. 131, 134, 136; 82 Pac. Rep. 838.

Same. Effect of vesting Police Court with "exclusive jurisdiction." By virtue of sec. 8½, art. XI, of the Constitution, it is competent for a freeholders' charter to provide "for the constitution, regulation, government, and jurisdiction of Police Courts"; but the authority thus conferred by the Constitutional provision to fix the jurisdiction of Police Courts gives no authority to oust any other court of jurisdiction it already had. Hence, where the boundaries of a justice's township are coterminous with the corporate limits of a city therein, and the general law confers jurisdiction of simple misdemeanors upon Justices' Courts, a charter adopted under such constitutional provision, and vesting "exclusive" jurisdiction of such offenses in the Police Court, simply leaves the Justices' Courts concurrent jurisdiction with the Police Courts of such misdemeanors. The adjective "exclusive," preceding the word "jurisdiction," found in the Charter provision, is of no importance. The Constitutional provision furnishes the measure of the power given to the framers of the Charter, and unless authority is granted by that instrument to declare that exclusive jurisdiction in this class of cases may be given to Police Courts, the word has no place in the Charter. In criminal cases, the jurisdiction of Justices' Courts is not fixed by the Constitution, but is a matter left solely to the legislature. So, where, by virtue of the Constitutional provision, there is a direct grant, through the medium of a freeholders' charter, to a Police Court of the same character of criminal jurisdiction as that granted by the legislature to a Justice's Court, there is no reason, upon any principle of statutory construction, why the grant of jurisdiction to the Police Court should result in a repeal of the general law vesting the same jurisdiction in the Justice's Court. Repeals by implication are not favored, and it would only be upon the theory of repeal by implication — and that a strained implication — which would justify a court in holding that the provision in such a charter, relative to the jurisdiction of Police Courts, repeals the general law. Under this disposition of the word "exclusive," the court will not, in such a case, consider the effect of sec. 8, art. XI, of the Constitution: Ex parte Dolan, 128 Cal. 460, 462, 463; 60 Pac. Rep. 1094.

Powers in criminal actions.

Third—Said Court, or any Judge thereof, shall have the same powers in all criminal actions, cases, examinations and proceedings as are now or may hereafter be conferred by law upon Justices of the Peace.

Jurisdiction to conduct preliminary examination. The Police Court, having been created by the Charter of the City and County of San Francisco, under authority of sec. 8½, art. XI, of the Constitution, any judge of that court, ipso facto, became vested with jurisdiction to conduct preliminary examinations, in cases of felony, under the general law of the State, as a magistrate: Elder v. McDougald, 145 Cal. 740, 743; 79 Pac. Rep. 439; see **Kerr's Cyc. Pol. Code,** § 808.

Sec. 3. Proceedings, how conducted; general law of the State. First — Testimony. Second — Statement on appeal; delay; amendments. Third — Soliciting Judges forbidden. Fourth — Demurrers to complaint. Fifth — Precedence of actions. Sixth — Continuances. Seventh — Bondsman; oath; valuation.

Proceedings, how conducted; general law of the State.

Sec. 3. Proceedings in said Court shall be conducted in accordance with the laws of this State regulating proceedings in Justices' and Police Courts and appeals to the Superior Court; and said Court or any Judge thereof shall have the same power in all criminal actions, cases and proceedings as are now or may be hereafter conferred by the general law of this State upon Justices of the Peace; provided, that:

References. As to proceedings in Police Courts in general, see **Kerr's Cyc. Penal Code,** §§ 858-883, 1425-1461; **Kerr's Cyc. Pol. Code,** §§ 4430-4432; **Kerr's Cyc. Code Civ. Proc.,** §§ 929-933.

Testimony.

First—No case shall be dismissed or fine imposed until the testimony for the prosecution shall be taken.

References. See **Kerr's Cyc. Penal Code,** §§ 1382-1389.

Statement on appeal; delay; amendments.

Second—Any defendant who neglects to file his statement on appeal within ten days after sentence shall lose his right to appeal, unless good cause for the delay be shown by affidavit. Press of business on the part of defendant's attorney shall not be deemed good cause for delay. Unless the District Attorney shall file amendments to the proposed statement on appeal within five days after the same shall have been filed and served, the proposed statement on appeal shall be the statement on appeal. The Judge before whom the case was tried shall settle the statement on appeal within five days after the District Attorney shall have filed his amendments to the proposed statement.

References. See **Kerr's Cyc. Penal Code,** § 1468.

Soliciting Judges forbidden.

Third—Any person who shall solicit or importune any of said Judges, either before or after judgment, to dismiss a case, or mitigate a sentence, unless the same be done in open court, shall be guilty of a contempt of court.

References. See **Kerr's Cyc. Penal Code,** §§ 166, 657; **Kerr's Cyc. Code Civ. Proc.,** §§ 177-178, 1209-1222.

Demurrers to complaint.

Fourth—A complaint may be demurred to on the ground that it does not set forth the offense charged with such particularities of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of, and the complaint may be amended by permission of the Court after a demurrer is sustained.

References. See **Kerr's Cyc. Penal Code,** §§ 1002-1012.

Precedence of actions.

Fifth—A defendant in custody shall have the right to be tried before a defendant on bail, and felonies shall be heard before misdemeanors.

References. See **Kerr's Cyc. Penal Code,** § 1048.

Continuances.

Sixth—The Judges of said Court shall try all cases as speedily as possible, and must refuse continuances after the first calling of a case for trial except upon affidavit showing good cause therefor.

Bondsman; oath; valuation.

Seventh—Other than lawfully authorized surety companies, no person shall be eligible to be a bondsman for any defendant on trial in the Police Court, or on appeal from a judgment therein, except he take an oath that the property specified in the undertaking is in the City and County of San Francisco, and that he is worth the amount specified exclusive of property exempt from execution, and exclusive of all demands for which he may become liable by reason of the forfeiture of any appeal or bail bonds for which he is surety.

References. See **Kerr's Cyc. Penal Code,** § 1279, concerning qualifications of bail. See **Kerr's Cyc. Code Civ. Proc.,** § 1056, concerning surety companies as bondsmen.

Sec. 4. District Attorney must attend.

Sec. 4. The District Attorney, either in person or by his Assistants, must be present at the sessions of the Court and attend to the prosecution of all cases coming before it, and make out all complaints and warrants for the arrest of persons charged with crime to be prosecuted in said Court.

References. Duty of Warrant and Bond Clerk to draw complaints: See infra, sec. 5 of this chapter. That duties of the District Attorney may be prescribed by the Charter, see Const., art. XI, sec. 8½.

The Warrant and Bond Clerk has no power, under the Charter, to fix the amount of bail to be given by persons charged with crime: San Francisco v. Hartnett, 1 Cal. App. Rep. 652, 653; 82 Pac. Rep. 1064.

Sec. 5. Warrant and Bond Clerk, salary; assistants, salary. Qualifications of Clerk; duties; bail and appeal bonds. Form of return on bonds. Bail and appeal bonds; limit; cash bail.

Sec. 5. The District Attorney shall appoint a Warrant and Bond Clerk who shall receive a salary of twenty-four hundred dollars a year, and three Assistant Warrant and Bond Clerks, each of whom shall receive a salary of fifteen hundred dollars a year. No person shall be appointed a Warrant and Bond Clerk who is not at the time of his appointment qualified to practice in all the Courts of this State. The Warrant and Bond Clerk shall keep his office open continuously night and day for the transaction of business; shall draw complaints in actions in the Police Court, and approve the same with his written signature; shall have the custody of all bail bonds and appeal bonds taken in the Police Court; shall examine the sufficiency of every bail bond and appeal bond taken in the Police Court and make a return thereon, within forty-eight hours after such bond shall have come into his possession, in the following form:

"I, ..., Warrant and Bond Clerk of the City and County of San Francisco, have examined the within bond and find it good in law. I have examined the records of the City and County of San Francisco, and find the property, its owners and encumbrances herein described, to be correct according to said records. (Signed ...., Warrant and Bond Clerk.)"

The Warrant and Bond Clerk shall indorse upon the bond the time when it was issued by him, or when it came into his possession. He may issue bail bonds and appeal bonds when the liability thereof does not exceed two thousand dollars, and order the discharge from custody of the persons for whom the bonds are issued; and he may take cash bail to the extent in any one case of one thousand dollars. He must account for and pay to the Treasurer all moneys received as bail in the manner that the County Clerk is required by law to account for and pay moneys received as fees. No clerk of the Police Court shall ever take bail or order the release of any one charged with an offense.

References. As to bail bonds, see **Kerr's Cyc. Penal Code,** §§ 1268-1317. As to bail on appeal, see **Kerr's Cyc. Penal Code,** §§ 1291, 1292. As to bail-moneys, see Charter, ante, art. IV, chap. III, sec. 2. That excessive bail shall not be required, see Const., art. I, sec. 6; U. S. Const., amdt. 8.

Sec. 6. Fixing bail.

Sec. 6. In the matter of fixing bail and ordering the release of prisoners the Warrant and Bond Clerk shall be subject to the Judges of the Police Court, and any violation of a valid order of any of said Judges shall be a contempt of Court.

Sec. 7. Office always open.

Sec. 7. For any failure to keep the office of the Warrant and Bond Clerk open continuously he shall be immediately removed from office by the District Attorney or by the Mayor.

Sec. 8. Who may accept bail.

Sec. 8. It shall be a misdemeanor for any person other than a Judge of some Court in the City and County, or other than said Warrant and Bond Clerk, to receive bail money for defendants or to order their discharge.

Sec. 9. Service of papers.

Sec. 9. All demurrers to complaints, notices of motion, statements and bills of exception on appeal to the Superior Court, must be served upon the Assistant District Attorney acting in the Department of the Court in which the case is set for hearing, or heard or tried.

References. As to how demurrer is put in, and its form, see **Kerr's Cyc. Penal Code,** § 1005. As to appeals, how taken, and service of notice of appeal, see **Kerr's Cyc. Penal Code,** §§ 1239-1241. As to bill of exceptions, see **Kerr's Cyc. Penal Code**, § 1171, and authorities cited in notes thereto.

Sec. 10. Clerk of Police Court; duties.

Sec. 10. The County Clerk shall be the Clerk of the Police Court, and he must be present either in person or by deputy at all sessions of the Court in the departments thereof; call the daily calendar of the departments, and keep full and complete records of all cases in the Court and the disposition made thereof by the Court.

References. That duties may be imposed on the County Clerk by the Charter, see Const., art. XI, sec. 8½.

Sec. 11. Stenographers; duties; salary.

Sec. 11. The Police Judges may appoint not more than two competent stenographers who shall attend the sessions of the Court and take notes of all preliminary examinations made at the sessions, and transcribe into typewritten long hand all evidence taken by either of them where the parties charged have been held for trial, and deliver one copy of the same to the Clerk and one copy to the District Attorney. Each of such stenographers shall be paid for all his services, including transcription and all stationery used by him, an annual salary of twenty-four hundred dollars.

References. As to phonographic reporters, see **Kerr's Cyc. Code Civ. Proc.**, §§ 268-274, and notes thereto. That it is a crime for a judge to receive any part of fees allowed stenographer, see **Kerr's Cyc. Penal Code**, § 94. As to duties of stenographers in writing out testimony, see **Kerr's Cyc. Penal Code**, § 869, and notes thereto.

Power to fix compensation of attaches. It is competent in a freeholders' charter to fix the compensation of all attaches of the Police Courts therein provided for: See sec. 8½, art. XI, of the Constitution. And the Charter-makers, acting under this Constitutional authorization, limited the compensation to be paid the stenographers of said court to fixed salaries, as designated in the above section: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 320.

Additional stenographer cannot be appointed and paid out of municipal treasury. The provisions of the Charter control the judges of the Police Court of the City and County of San Francisco in appointing stenographers to report preliminary examinations in felony cases, and supersede **Kerr's Cyc. Penal Code**, § 869, to the extent that a Police Judge, acting as a committing magistrate, has no power, under this section of the code, to appoint another stenographer to be compensated out of the municipal treasury: Elder v. McDougald, 145 Cal. 740, 749; 79 Pac. Rep. 429.

Stenographer is an attache of the court. A stenographer, appointed by a Police Judge of the City and County of San Francisco, under the Charter, is an "attache" of the Police Court, within the meaning of sec. 8½, art. XI, of the Constitution. While the Constitution does not expressly provide for the appointment of attaches to the judge of the Police Court, it is apparent from the context of the provision of the Constitution that such power was conferred. The right to "constitute, regulate, and govern Police Courts" would be sufficient warrant for the appointment of all persons necessary to its complete and efficient organization, and the relation of the term, "their clerks and attaches," to the general provision authorizes not only the fixing of the compensation of such attaches, but their appointment by the judges of the court when necessary and proper. A stenographer is properly included in the category of attaches who may be provided to the judge of the court, because that word is to be taken, in the general and enlarged sense, as applying to any one recognized as a necessary adjunct to a court, tribunal, or office, and by virtue of the necessity existing at practically all preliminary examinations for the appointment of a stenographer, he should be treated as coming within that definition: Elder v. McDougald, 145 Cal. 740, 746, 747; 79 Pac. Rep. 429.

Sec. 12. Justices may act.

Sec. 12. The Mayor may in writing appoint any Justice of the Peace to act as Judge of the Police Court, or any department thereof, during the temporary absence or inability of the Judge to act.

References. Justices of the Peace as Police Judges: See **Kerr's Cyc. Pol. Code,** § 4428.

Sec. 13. Chief of Police to furnish daily calendar of arrests; statements therein.

Sec. 13. The Chief of Police shall cause to be made out and delivered to each of the Clerks of the Court at or before nine o'clock in the forenoon of each day a calendar of arrests in which the cases shall have been assigned to the departments of the Court in accordance with the rules and regulations established by the Police Judges. The calendar shall state "the offense charged;" whether the defendant is "in custody" or "on bail;" "the amount of bail;" "whether cash or bond," and "the name of the arresting officer."

Sec. 14. Bailiffs in court.

Sec. 14. The Chief of Police shall appoint one or more Police Officers to attend the sessions of the Police Court in each department thereof to preserve order and execute the orders of the Court.

Sec. 15. Rules.

Sec. 15. The Police Judges shall adopt all necessary rules and regulations for conducting the business of the Court.

Sec. 16. Attorney's qualifications.

Sec. 16. No attorney shall appear in said Court to prosecute or defend persons charged with offenses unless at the time of his appearance he be qualified to practice law in all the courts of this State.

Sec. 17. Term of Police Judges elected in 1898.

Sec. 17. The term of office of the Police Judges elected at the general election held in the year eighteen hundred and ninety-eight shall terminate at the hour of noon on the first Monday after the first day of January in the year nineteen hundred, and they shall at said time be succeeded by the Police Judges provided for in this Chapter; and all proceedings pending in said Court shall be transferred to the Police Court created under this Charter, and the Judges elected as herein provided shall have and obtain jurisdiction of the same.

References. As to election of Police Judges in the municipality, see Charter, post, art. XI, chap. II, sec. 1.

CHAPTER IX.

The San Francisco Law Library.

Sec. 1. Law Library. Rooms. Act of Legislature. Appropriations. Other revenues.

Section 1. The Supervisors must provide, fit up and furnish, with fuel, lights, stationery, and all necessary conveniences, attendants and care, rooms convenient and accessible to the judges and officers of the courts and of the municipal government sufficient for the use and accommodation of the San Francisco Law Library, established under an Act of the Legislature of this State entitled: "An Act to provide for increasing the Law Library of the corporation known as the San Francisco Law Library, and to secure the use of the same to the Courts held at San Francisco, the Bar, the City and County Government and the People of the City and County of San Francisco," approved March 9th, 1870. The Supervisors must appropriate, allow, and order paid out of the proper fund such sums as may be necessary for the purposes aforesaid; and all sums lawfully appropriated and expended pursuant hereto shall be paid out of the proper fund on demands duly audited, in the mode prescribed by this Charter for auditing other demands upon the treasury. The County Clerk must pay monthly to the Treasurer of the San Francisco Law Library such moneys as he shall collect under the Act referred to for the benefit of said Law Library.

ARTICLE VI.

DEPARTMENT OF PUBLIC WORKS.

CHAPTER I.

The Board of Public Works.

Sec. 1. Board of Commissioners; appointed by Mayor; term; qualifications; salary.

Section 1. There shall be a Department of Public Works under the management of three Commissioners who shall constitute the Board of Public Works, and who shall give all their time during official business hours to the duties of their office. The members of said Board shall be appointed by the Mayor. Of those first appointed he shall appoint one for one year, one for two years, and one for three years. Each year thereafter he shall appoint for three years one person as the successor of the Commissioner whose term of office expires in that year. All such appointments shall be so made that not more than one member shall at any one time belong to the same political party. No person shall be eligible for appointment as such Commissioner unless he is, and has been for at least five years next preceding his appointment, an elector of the City and County. Each of said Commissioners shall receive an annual salary of four thousand dollars.

Sec. 2. President of the Board; term.

Sec. 2. Of the Commissioners first appointed under this Charter, one shall be designated by the Mayor to serve as President for one year. All subsequent Presidents of the Board shall be elected by the members thereof for terms to be fixed by said Board. The President of the Board shall in each case hold office until his successor has been elected or until his membership on the Board expires.

Sec. 3. Secretary of the Board; salary. Employees; compensation.

Sec. 3. The Board may appoint a Secretary who shall receive an annual salary of eighteen hundred dollars. The Board may employ such clerks, superintendents, inspectors, engineers, surveyors, deputies, architects and workmen as shall be necessary to a proper discharge of their duties under this Article, and fix their compensation; but no compensation to any of said persons shall be greater than is paid in the case of similar employments.

Harmonizing of sections. There is no way by which to bring this section and sec. 6, art. XIV, post, into harmony with subd. 24, sec. 1, chap. II, art. II, except to regard the general power given to the Park Commissioners and the Board of Public Works as limited by the special power granted to the Board of Supervisors. The provision found among the powers of the Supervisors would be idle and of no meaning, unless it be regarded as a special grant of power governing the general powers bestowed upon the various administrative departments. Hence, the Board of Supervisors may fix a minimum wage of two dollars and a half for a day of eight hours, notwithstanding the power given to the Board of Public Works and the Park Commissioners to fix the compensation of their employees: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 588, 590.

Sec. 4. Rules and regulations. Bonds of employees.

Sec. 4. The Board shall establish all necessary rules and regulations for its government, and for the performance of its duties, and for the regulation and conduct of its officers and employees; and shall require adequate bonds from its officers and employees, except laborers, for the faithful performance of all their duties in such sums as may be fixed by the Supervisors. Said bonds shall be approved by the Mayor and shall be filed in the office of the Auditor.

Sec. 5. Meetings weekly; place and time. Special meetings. Vote by ayes and noes.

Sec. 5. The Board shall hold regular meetings at least once each week at a place and time to be fixed by resolution entered on its minutes. No changes in place or time of regular meetings shall be made without a resolution passed at least two weeks before the time the change is to go into effect. Such special meetings may be held as the Commissioners may deem necessary after notice of the same has been posted ten hours before the time of holding any such meeting. All meetings shall be public. No business shall be transacted at an adjourned meeting except such as may have been under, or proposed for, consideration at the meeting from which the adjournment was had. No business shall be transacted at a special meeting except that which is named in the notice of said meeting. Special meetings may be called by any member of the Board. In every case where a power is exercised under this Article by the Board the vote thereon shall be taken by ayes and noes.

Sec. 6. Record of all proceedings to be kept. Duties of Secretary.

Sec. 6. The Board shall keep and preserve a record of all its proceedings, and copies of all plans, specifications, reports, contracts, estimates, certificates, receipts, surveys, field notes, maps, plats, profiles, and of all papers pertaining to the transactions of the Board. The Secretary of the Board shall keep a record of all its transactions, specifying therein the names of the Commissioners present at all the meetings, and giving the ayes and noes upon all votes. The Secretary shall post and publish all orders, resolutions and notices as required in this Chapter or which the Board shall order to be posted or published. He shall perform such other duties as may from time to time be prescribed by the Board.

Sec. 7. Powers and duties of the Board.

Sec. 7. The Board shall be the successor in office and shall have all the powers and perform all the duties of the Superintendent of Streets, Highways and Squares, of the New City Hall Commissioners, and of the Commissions in existence at the time this Charter goes into effect for the opening, extending, widening, narrowing, straightening, closing or changing the grades of streets in the City and County.

Opening, etc., of streets. See act of March 6, 1889, Stats. 1889, p. 70, act of March 23, 1893, Stats. 1893, p. 220, act of March 18, 1885, Stats. 1885, p. 147, as to work upon streets; act of March 11, 1893, Stats. 1893, p. 153, as to the planting, etc., of shade-trees and maintenance of hedges on streets; act of March 24, 1876, Stats. 1875-76, p. 461, as to New City Hall Commissioners; and act of March 6, 1889, Stats. 1889, p. 70, as to Commissioners for opening, etc., of streets.

Sec. 8. Custodian of all official papers and matters relating to streets.

Sec. 8. The Board shall immediately after its organization take possession and have the custody and control of all maps, plats, surveys, field notes, records, plans, specifications, reports, contracts, models, machinery, instruments, tools, appliances, contract rights, privileges, books, documents and archives and other property belonging to the City and County, or which may be of value and importance to the City and County, and heretofore kept by or in the offices of the City and County Surveyor, the Superintendent of Public Streets, Highways and Squares, the Board of New City Hall Commissioners, and all commissions in existence at the time this Charter goes into effect for the opening, extending, widening, narrowing, straightening, closing or changing the grades of streets, and all other business and works pertaining to any of said offices or commissions.

Sec. 9. Matters under control of the Board. (1) Streets; tracks; poles; wires; sewers; pipes; building materials; exception. (2) Drainage. (3) Cleaning and sprinkling streets; lighting. (4) Public buildings. (5) Building construction. (6) Constructing public buildings. (7) Conduits; garbage and sewage; sewerage and drainage system. (8) Public utilities. (9) Excavation of streets; deposit to cover cost of same. Board shall do the work by contract or day's labor. Insufficient estimate; lien for payment; excess estimate; surplus to be returned.

Matters under control of the Board.

Sec. 9. The Board of Public Works shall have charge, superintendence and control, under such ordinances as may from time to time be adopted by the Supervisors:

Streets; tracks; poles; wires; sewers; pipes; building materials; exception.

1. Of all public ways, streets, avenues, lanes, alleys, places, courts, roads, highways and boulevards now opened or which may hereafter be opened in the City and County; of the manner of their use; and of all work done upon, over

or under the same; and herein particularly the Board shall have exclusive authority to prescribe rules and grant permits, in conformity with the ordinances of the Supervisors, for the moving of buildings through the streets thereof, and the building or placing of cellars or vaults under the streets or sidewalks, and of temporary fences inclosing areas upon the sidewalks; the laying down and construction of railroad tracks in the streets; the erection of telegraph and telephone poles, and poles for electric lighting, and the laying under the surface of the streets or sidewalks of telegraph or telephone wires, and wires for electric lighting and power; the construction of drains and sewers; the laying down and taking up of gas, steam and water pipes, pneumatic or other tubes or pipes, and sewers and drains, and determining the location thereof; the using of the street or any portion thereof for the deposit of building material in front of a building during its construction or repair, or for any purpose other than such as ordinarily and properly belongs to the public from the dedication thereof to public use; and without such permission in writing from said Board no person shall do any of the acts in this section enumerated; but nothing in this section shall be so construed as to give said Board the power to grant permits for or allow the permanent encroachment upon any sidewalk of any structure;

Construction of section. This provision was intended to preserve to the city the right it has to the full width of the sidewalk. But a denial of the power to authorize the permanent encroachment upon the sidewalk of any structure would probably not prevent the city from authorizing the use of an awning extending over the sidewalk, or of a bay window, or cornice, or a sign at such height above the sidewalk as to be of no possible hindrance to public travel, and which would not impair the use of the street as a public highway: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 583, 584.

Same. Words at close of subdivision. The words at the close of this subdivision, with reference to the construction of the section, are words of limitation, and are intended to abridge the general power previously bestowed. They mean that the Board of Public Works shall not have the power to permit the building or erecting of any structure upon any portion of the sidewalk, which structure is intended to or does permanently cut off or lessen the amount of sidewalk space available for the use of the general public: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 250, 251.

Limitation on use of streets. The Board of Supervisors may, within Charter limitations, determine how the streets may be used, and the Board of Public Works must see to it that no inconsistent use is allowed. The general control of the streets given to the Board of Supervisors is to this extent limited, that it can directly authorize no one to use the streets for any private purpose, but it may pass ordinances under which certain uses may be allowed upon permits granted by the Board of Public Works: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 250, 251.

Permit. Temporary obstructions. The Board of Supervisors has power to grant permission, by general ordinance, for the maintenance of temporary obstructions on streets and sidewalks; and the Board of Public Works may permit any temporary use of the sidewalk consonant with the law of the city, but it can permit no permanent encroachment to be made upon this portion of the highway. No structures which permanently narrow the walking-space upon the sidewalk can be permitted or allowed to be erected. As to whether a given structure constitutes a "permanent encroachment," the Board of Public Works must decide according to the facts of each case: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 250, 251, 252.

Permit. To be granted by Board of Public Works. The method which should be adopted in all matters involving Charter restrictions as to permanent encroachment upon sidewalks should be for the Supervisors, as the legislative body of the municipality, to pass general ordinances touching the various uses of the public streets, and authorize the Board of Public Works, as an administrative arm of the government, to grant permits within the terms of such general ordinances: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 583, 585.

Permit. Electric-light company. The Board of Public Works has power to grant a permit to an electric-light company to use the streets, where no franchise has been granted by the Board of Supervisors, provided that the electric-light wires to be carried are to be used exclusively in the furnishing of electric illuminating light service to the City and County and the inhabitants thereof: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 521, 525.

Permit. Structures narrowing sidewalk. The Board of Public Works cannot permit the building of any structure that will permanently narrow the width of the sidewalk, nor can the Board of Supervisors authorize the granting of such permit. This probably would be so without any such prohibitory provision as is contained in the Charter. But the language of the Charter would certainly be put to a forced construction if made to deny to the Board of Supervisors the power to permit the erection of any post or sign jutting over the sidewalk which, under the terms of the permit, would be removable at the pleasure of the city: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 457.

Permit. Sign not a "structure." A sign attached to a building, under license of the city, or a transparency raised above the sidewalk, which may serve to illuminate the street, is not such a "structure" as the Charter intended to prohibit when it refers to structures which are permanent encroachments, especially so when such signs are made removable at the pleasure of the city by the language of the permitting statute: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 457, 458.

Drainage.

2. Of all sewers, drains and cesspools, and of the work pertaining thereto or to the drainage of the City and County;

Cleaning and sprinkling streets; lighting.

3. Of the cleaning and sprinkling of all public streets, avenues, alleys, places, courts, roads, highways and boulevards, and the lighting of the same and the lighting of the parks, squares and other public places and public buildings;

Public buildings.

4. Of the cleaning of all the public buildings of the City and County and of the appointment of such janitors and employees as are needed for such purpose;

Building construction.

5. Of the supervision of any and all building construction in the City and County;

Constructing public buildings.

6. Of the construction of any and all public buildings and structures, under plans duly approved by the various departments, including all school houses and fire-department buildings, and the repair and maintenance of any and all buildings and structures owned by the City and County;

Elevator insurance not authorized. The Charter makes no express provision for insurance of any kind. Though the power to insure buildings was granted in express terms, power to contract for elevator insurance would not be necessarily implied. Elevator insurance is obtained primarily to protect the proprietor of a building in which the elevator is operated from damages due to elevator accidents. The inspection is a means taken by the company furnishing the insurance to prevent such accidents. Such a contract is clearly not to be necessarily or fairly implied in, nor is it incident to, any of the powers expressly granted by the Charter. The power to repair and maintain the buildings of the City and County does not carry with it the power to contract for protection against damages for injuries resulting from the faulty care and conditions of such buildings: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 144, 146.

Conduits; garbage and sewage; sewerage and drainage system.

7. Of any and all wires and conduits, the collection and disposal of street refuse, garbage and sewage, and the de-

signing, construction and maintenance of the sewerage and drainage systems of the City and County;

Public utilities.

8. Of any and all public utilities owned, controlled or operated by the City and County, or which may hereafter be so owned, controlled or operated.

Excavation of streets; deposit to cover cost of same. Board shall do the work by contract or day's labor. Insufficient estimate; lien for payment; excess estimate; surplus to be returned.

9. When at any time any person, company or corporation desires to have opened or torn up the roadway of any street, lane, alley, place or court in the City and County for any purpose, a written application shall be made to the Board of Public Works for permission to do so. The Board shall thereupon make an estimate of the expense of opening or tearing up such street, lane, alley, place or court and of restoring the same to as good a condition as it was in before said opening or tearing up. Such person, company or corporation must thereupon deposit the amount of such estimate with the Board of Public Works which shall thereupon pay the same into the General Fund.

The Board shall thereupon proceed to open or tear up said street, lane, alley, place or court as in said application requested, and shall at the proper time restore such street, lane, alley, place or court to as good a condition as it was in before said opening or tearing up. Contracts for the doing of such work by the Board may be let by it in the manner provided in this Chapter, or the work may, at the option of the Board, be done by days' labor.

If the expense of such work has been more than the aforesaid estimate, the person, company or corporation shall be indebted to the City and County for such balance; and the same shall constitute a lien upon the property of such person, company or corporation. Said lien shall remain in force until such balance has been paid, or until the lien shall be legally discharged. Said lien may be enforced by suit brought by the City and County in accordance with the provisions of the Code of Civil Procedure of the State of California. If the expense of such work has been less than the aforesaid estimate, then the surplus shall constitute a claim in favor of such person, company or corporation, against the City and County, and as such shall be presented, approved and paid as other claims.

Subdivision limited by other provisions of Charter. As to provisions of the Charter which deal with specific classes of street-work, the general language of subdivision 9 must be treated as limited thereby, in order to make the conflicting provisions reasonable and save them from being absurd. For instance, the Charter contains street-improvement provisions much like those contained in the Vrooman Act. Such provisions would be nullified in greater part were subdivision 9 allowed to govern. If the expression, "for any purpose," found in this subdivision, is construed as including such street improvements as are elsewhere in the Charter expressly provided for, the main body of the provisions relating to such improvements is destroyed. This cannot have been the legislative intention. It must follow, therefore, that it was not intended by the subdivision under consideration to control the great body of what is generally known as street improvements: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 222, 224, 225.

Provisions do not apply to what corporations. It seems that gas, electric-light, and water corporations are not governed by the provisions of subdivision 9, being protected therefrom by sec. 19, art. XI, of the Constitution, which gives to such corporations the "privilege of using the streets and laying down pipes and conduits therein and connections therewith," subject only to "general regulations for damages and indemnity for damage." The work itself must be done under direction of the Board of Public Works, but not by the Board.

Telephone, telegraph, and power companies, on the other hand, should comply with this provision of the Charter in the laying of conduits in the street. These companies are not included in the section of the Constitution above quoted: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 222, 226.

Street-railway companies. Duty and obligation of. In the laying down of street-railroad tracks and the repairing of the streets for the operation of the road, certain street-work may be necessary. This the street-railroad corporations are themselves expressly required by law to do, the obligation resting upon them to keep the street between their tracks, and two feet on each side thereof, paved and in repair: See **Kerr's Cyc. Civ. Code,** § 498. The Charter also expressly provides for an arbitrary order by the Board of Supervisors upon such street-railroad corporations, directing them to pave or macadamize "the portion of the street required by law to be paved or macadamized" by such corporation: See Charter, art. VI, chap. II, sec. 24. In this provision the Charter recognizes the duty of the corporation as being that defined by the general law, and virtually adopts such general provision as part of the Charter. Under this provision the railroad corporation must do the work, and restore the street itself, as prescribed in the general statute. There is no provision of the Charter purporting to relieve it from such obligation: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 222, 226. See Charter, post, art. VI, chap. II, sec. 24, note.

Telephone and telegraph companies. A telephone and telegraph company should be held subject to the provisions of the Charter as to the opening and closing of trenches in the public streets: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 447, 453.

"Emergency repairs" not covered. "Emergency repairs" are not covered by the Charter provision as to the tearing up of streets, but should be regulated by proper ordinance: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 132.

Sec. 10. Data for Supervisors.

Sec. 10. All examinations, plans and estimates required by the Supervisors in connection with any public improvements or utilities, shall be made by the Board of Public Works and it shall, when requested to do so, furnish information and data for the use of the Supervisors.

Construction of section. It appears that, under this section, and sec. 1, art. XII, of the Charter, post, the plans and estimates required as preliminary, under the submission of any public utility proposition to the people, must come from the Board of Public Works, and shall come to the Supervisors through the City Engineer. The intent of the Charter would probably have effect if the resolutions of the Board of Supervisors calling for plans and estimates for utilities and improvements directed the Board of Public Works to furnish such plans through the City Engineer; but before any declaratory ordinances are passed relating to public utilities, it should appear from the records of the Board of Supervisors that the plans and estimates of all the public utilities mentioned in sec. 2 of art. XII have been secured: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 607, 608, 609.

Request for plans and estimates. The Board of Supervisors itself must make request of the Board of Public Works to furnish plans and estimates for utilities and improvements, or appraisements. It cannot act through a committee of the Board, having the various propositions before it. When the Charter refers to the Board of Supervisors as having certain powers, it does not mean that certain committees of that Board have such powers. It requires the formal action of the Board to request such plans and estimates from the Public Works Department: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 607, 608.

Purchase of city property. Description. When city property is included within lands proposed to be acquired for park or other purposes, it is necessary to describe only that portion of the tract which the city intends to purchase: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 607, 609.

Sec. 11. City Engineer. Duties; powers; certificate on street assessments.

Sec. 11. Said Board shall appoint a Civil Engineer of not less than five years' practical experience as such, who shall be designated the City Engineer. He shall hold his office at the pleasure of the Board.

He shall perform all the civil engineering and surveying required in the prosecution of the public works and improvements done under the direction and supervision of said Board, and shall certify to the progress and completion of the same, and do such other surveying or other work as he may be directed to do by said Board or by the Supervisors. He shall possess the same power in the City and County in making surveys, plats and certificates as is or may from time to time be given by law to City Engineers and to County Surveyors, and his official acts and all plats, surveys and certificates made by him shall have the same validity and be of the same force and effect as are or may be given by law to those of City Engineers and County Surveyors. No street assessment shall be valid without his certificate as to the quantities and unless it be to the effect that the work has been done to the official lines, elevations and grades.

City Engineer. Certificate of. See O'Connor v. Hooper, 102 Cal. 528, 532; 36 Pac. Rep. 939. Such certificate is invalid if signed by a mere clerk: Rauer v. Lowe, 107 Cal. 229; 40 Pac. Rep. 337. It must be recorded, as well as the warrant, assessment, and diagram, as an additional and necessary prerequisite to the creation of the lien: Rauer v. Lowe, 107 Cal. 229, 234; 40 Pac. Rep. 337; and see Charter, post, art. VI, chap. II, sec. 12, as to recording of the warrant, assessment, and diagram.

Same. Duty of, to make surveys. Fees. It is the duty of the City Engineer to make private surveys when required to do so by the Board of Public Works or Board of Supervisors; and the fees and charges for such work shall go into the municipal treasury, it being the evident purpose of the Charter to make this office a source of revenue to the City and County: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 186, 187. See infra, sec. 12 of this chapter.

Sec. 12. Service of City Engineer to be exclusive. Salary. Fees for services. Payment into treasury.

Sec. 12. He shall serve the Board exclusively and shall not be engaged in any other business while he is in its service. He shall receive no compensation except his salary. The Board shall by resolution establish fees and charges for the services to be performed by the City Engineer for persons, companies and corporations, and may from time to time change and adjust the same. Said Engineer shall require such fees or charges to be paid in advance for any official act or service demanded of him, and such moneys thus paid shall be paid to the Treasurer and credited by him to such fund or funds as said Board may direct.

Sec. 13. Appointees of Board.

Sec. 13. The Board shall appoint the necessary heads of departments under its charge. Each such head shall have the sole executive control in his own department, subject to the rules and regulations prescribed by the Board.

Sec. 14. Public work by contract; exceptions. Letting of contracts; notice; proposals; urgent necessity.

Sec. 14. All public work authorized by the Supervisors to be done under the supervision of the Board of Public Works shall, unless otherwise determined by the Board of Public Works, be done under written contract, except in case of urgent necessity as hereinafter provided; and except as otherwise specifically provided in this Charter, the following proceedings shall be taken in all cases in the matter of the letting of contracts by said Board. Before the award of any contract for doing any work authorized by this Article, the Board shall cause notice to be posted conspicuously in its office for not less than five days, and published for the same time, inviting sealed proposals for the work contemplated; except, however, that when any repairs or improvement, not exceeding an estimated cost of five hundred dollars, shall be deemed of urgent necessity by the Board, such repairs or improvement may be made by the Board under written contract or otherwise, without advertising for sealed proposals.

Advertising for proposals. As to necessity of order authorizing clerk to advertise for proposals, see Meuser v. Risdon, 36 Cal. 239; Donnelly v. Tillman, 47 Cal. 40; Donnelly v. Marks, 47 Cal. 187. Such order, however, is sufficient, although it does not mention sealed proposals, nor specify the time or place of giving notice: Himmelmann v. Byrne, 41 Cal. 500. A resolution authorizing the clerk to "advertise" for proposals to do the work mentioned in the resolution is sufficient authority to the clerk to advertise for proposals in the mode provided by law, and authorizes him to post the notice in the office of the Superintendent of Streets, as well as to publish it in the proper newspaper for the required period: Shepard v. Colton, 44 Cal. 628, 630.

"Urgent necessity." Judge of. Under these provisions the Board of Public Works may decide when repairs are of "urgent necessity": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 426, 428, 430.

Sec. 15. Advertisements for proposals.

Sec. 15. Said advertisement and notice shall invite sealed proposals to be delivered at a certain day and hour at the office of the Board for furnishing the materials for the proposed work, or for doing said work, or for botn, as may be deemed best by the Board, and shall contain a general description of the work to be done, the materials to be furnished, the time within which the work is to be commenced, and when to be completed, and the amount of bond to be given for the faithful performance of the contract, and shall refer to plans and specifications on file in the office of the Board for full details and description of said work and materials.

Sealed proposals. Invitation for. As to length of time that notice must be posted, see Hewes v. Reis, 40 Cal. 255; Brooks v. Satterlee, 49 Cal. 289; Himmelmann v. Cahn, 49 Cal. 285; Alameda Macadamizing Co. v. Huff, 57 Cal. 331. Notices for sealed proposals must refer to the diagram and specifications of the proposed work: City of Stockton v. Clark, 53 Cal. 82, 83; and must be posted for the required time, or such defect will render all subsequent proceedings void: Hewes v. Reis, 40 Cal. 255, 262. Such notice is not vitiated by an erroneous use of the word "regraded" instead of "graded": Brady v. Fisel, 53 Cal. 49. As to publication and service of any notice required in this article, see Charter, post, art. VI, chap. II, sec. 26.

Sec. 16. Form of proposals; bids; affidavit; collusion; erasures; penalty for violation. Check for ten per cent. Only one bid permitted.

Sec. 16. All proposals shall be made upon printed forms to be prepared by the Board, and furnished gratuitously upon application, with a form for the affidavit hereinafter provided for printed thereon. Each bid shall have thereon the affidavit of the bidder that such bid is genuine, and not collusive or sham; that he has not colluded, conspired, connived or agreed, directly or indirectly, with any other bidder or person to put in a sham bid, or that such other person shall refrain from bidding; and has not in any manner sought by collusion to secure any advantage against the City and County, or any person interested in said improvement, for himself or any other person. All bids shall be clearly and distinctly written, without any erasure or interlineation, and if any bid shall have an erasure or interlineation it shall not be received or considered by the Board. Any contract made in violation of any of the foregoing provisions, and in the case of improvement of streets, any assessment for the work done under such contract, shall be absolutely void.

All proposals offered shall be accompanied by a check, certified by a responsible bank, payable to the order of the Clerk of the Supervisors, for an amount not less than ten per centum of the aggregate of the proposal, and no proposal shall be considered unless accompanied by such check.

No person, corporation or firm shall be allowed to make, file, or be interested in, more than one bid for the same work. If on the opening of said bids more than one bid appear in which the same person, corporation or firm is interested, all such bids shall be rejected.

Validity of bids. Any bid which is clearly collusive and fraudulent may be rejected: Rice v. Board of Trustees, 107 Cal. 398, 401; 40 Pac. Rep. 557. A contract let without inviting proposals for bids is unauthorized, and void under the Street Improvement Act: Santa Cruz etc. Pav. Co. v. Broderick, 113 Cal. 628; 45 Pac. Rep. 863. A bid for entire work, and not for separate blocks, as required by ordinance, cannot be accepted: City of Stockton v. Creanor, 45 Cal. 643, 646.

Affidavit. Purpose of provision. Fraud. As to what constitutes such a collusive agreement by a successful bidder as to be a fraud upon owners and to vitiate the assessment, see Brady v. Bartlett, 56 Cal. 350, 368. An affidavit of one of two bidders, though partners, who unite to make a bid on a public improvement, does not satisfy the requirement, in the above section, that every bid shall have thereon the "affidavit of the bidder," that the bid is not "collusive" or "sham," etc. The purpose of the provision is to prevent collusion and fraud, and to sift the conscience of the bidder, or all of the bidders if there be more than one: Flinn v. Strauss, Ct. of App., 1st Dist., Aug. 15, 1906; 87 Pac. Rep. 414, 415.

Sec. 17. Delivery and opening of bids; award of contract. Board may reject bids; disposition of checks. Forfeiture of check.

Sec. 17. On the day and at the hour specified in said notice inviting sealed proposals the Board shall assemble and remain in session for at least one hour, and all bids shall be delivered to the Board while it is so in session, and within the hour named in the advertisement. No bid not so delivered to the Board shall be considered. Each bid as it shall be received shall be numbered and marked "Filed" by the President and authenticated by his signature. At the expiration of the hour stated in the advertisement within which the bids will be received, the Board shall, in open session, open, examine and publicly declare the same, and an abstract of each bid shall be recorded in the minutes of the Board by the Secretary. Before adjourning, the Board shall compare the bids with the record made by the Secretary, and shall thereupon, at said time, or at such other time, not exceeding twenty days thereafter, as the Board may adjourn to, award the contract to the lowest bidder, except as otherwise herein provided. Notice of such award shall forthwith be posted for five days by the Secretary of the Board in some conspicuous place in the office of the Board, and be published for the same period of time.

The Board may reject any and all bids, and must reject the bid of any party who has been delinquent or unfaithful in any former contract with the City and County, and all bids other than the lowest regular bid; and on accepting said lowest bid, shall thereupon return to the proper parties the checks corresponding to the bids so rejected. If all the bids are rejected, the Board shall return all the checks to the proper parties and again invite sealed proposals as in the first instance.

The check accompanying the accepted bid shall be held by the Secretary of the Board until the contract for doing said work, as hereinafter provided, has been entered into, whereupon said certified check shall be returned to said bidder.

If said bidder fails or refuses to enter into the contract to do said work, as hereinafter provided, then the certified check accompanying his bid, and the amount therein mentioned, shall be forfeited to the City and County, and shall be collected and paid into the General Fund. Neither the Board of Public Works nor the Supervisors shall have power to relieve from or remit such forfeiture.

References. As to form of resolution of award, see Dougherty v. Hitchcock, 35 Cal. 512. Concerning the power to reject any and all proposals for a street improvement, see Girvin v. Simon, 116 Cal. 604, 607; 48 Pac. Rep. 720.

Award of contract. In general. The contract cannot be awarded by a committee of the Board: City of Stockton v. Creanor, 45 Cal. 643, 646. Notice of the award cannot be published by the clerk of the Board without its order: Donnelly v. Tillman, 47 Cal. 40; Donnelly v. Marks, 47 Cal. 187; Himmelmann v. Satterlee, 49 Cal. 387. Separate contracts are not allowable for a single improvement: Treanor v. Houghton, 103 Cal. 53; 36 Pac. Rep. 1081.

Award of contract. Mayor's approval not necessary. That a resolution approving the award of a contract, if passed by a three-fourths vote of the Board, is sufficient without the Mayor's approval, see McDonald v. Dodge, 97 Cal. 112; 31 Pac. Rep. 909.

Award and subsequent proceedings, when void. All proceedings subsequent to the award are void, unless the Board made an order for publishing the award of the contract: Shepard v. Colton, 44 Cal. 628; Donnelly v. Tillman, 47 Cal. 40; Donnelly v. Marks, 47 Cal. 187; Himmelmann v. Townsend, 49 Cal. 150; Himmelmann v. Satterlee, 49 Cal. 387. That an award is void where the bids were opened before the time stated in the notice, see Perine etc. Pav. Co. v. Quackenbush, 104 Cal. 684, 686; 38 Pac. Rep. 533.

Certified check. When the proceedings for street improvement are illegal, the promise of the contractor, accompanied by the certified check, is a naked offer, met and supported by no consideration, and a deposit of money accompanying such promise is recoverable at law: Perine etc. Pav. Co. v. Pasadena, 116 Cal. 6, 8; 47 Pac. Rep. 777.

Sec. 18. Penalty for collusion.

Sec. 18. If at any time it shall be found that the person to whom a contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, for the purpose of preventing any other bid being made, then the contract so awarded shall be null and void, and the Board shall advertise for a new contract for said work.

Fraud of contractor. See Charter, ante, sec. 16 of this chapter, and art. VI, chap. II, sec. 6, post. A collusive and fraudulent bid may be rejected: Rice v. Board of Trustees, 107 Cal. 398, 401; 40 Pac. Rep. 551.

Sec. 19. Owners of major part of frontage may contract for and do the work; otherwise Board will contract.

Sec. 19. In the case of improvement of streets, the owners of the major part of the frontage of lots and lands upon the street whereon the work is to be done, or which are liable to be assessed for said work, or, in the case of an assessment district, the owners of a major part of the superficial area embraced in such district, or their agents, shall not be required to present sealed proposals, but may, upon making oath that they are such owners, or the agents of such owners, within ten days after the first posting of notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded. Should such owners not enter into a written contract therefor within said ten days, or should they enter into such contract and fail to commence the work within the time stated therein, which time shall not be less than ten nor more than twenty days from the time of the execution of such contract, the Board shall enter into a contract with the original bidder to whom the contract was awarded at the price specified in his bid. If the original bidder shall fail or refuse for fifteen days after the first posting of notice of the award to enter into the contract, the Board shall again advertise for proposals as in the first instance.

"Major part of the frontage," meaning of: See Cochran v. Collins, 29 Cal. 129.

Owners may contract for and do work. See San Francisco v. Buckman, 111 Cal. 25; 43 Pac. Rep. 396. As to form of such contract, see O'Connor v. Hooper, 102 Cal. 528, 529; 36 Pac. Rep. 939. As to when a contract made by owners with the consent of the Superintendent of Streets to do the work of grading is void and of no effect, see San Francisco v. Buckman, 111 Cal. 25, 30; 43 Pac. Rep. 396. A contract which merely provides for the grading of one half of a street, being silent as to which half is to be graded, is too uncertain and indefinite to be admissible in evidence: Rauer v. Fay, 110 Cal. 361; 42 Pac. Rep. 902. When a contract is taken by property owners, and is assigned by them, they are estopped to deny its validity: Callender v. Patterson, 66 Cal. 356; 5 Pac. Rep. 610.

Superintendent of Streets. Contracts. Until the expiration of the period within which owners are allowed to enter into the contract, the Superintendent of Streets has no power to enter into a contract with the bidder, and a contract entered into with him prior to that time is invalid, and cannot form the basis of an assessment: California Imp. Co. v. Quinchard, 119 Cal. 87; 51 Pac. Rep. 24. A Superintendent of Streets who has entered into a contract with the owner cannot be compelled to enter into a contract for the work with the contractor to whom it was awarded: Fairchild v. Wall, 93 Cal. 401, 405; 29 Pac. Rep. 60.

Sec. 20. Failure to complete work.

Sec. 20. If the owners or contractor who may have entered into any contract do not complete the same within the time limited in the contract, or within such further time as is hereinafter provided, the Board may relet the unfinished portion of said work in accordance with the provisions in this Chapter prescribed for the letting of the whole.

Contracts may be relet. That the contract shall specify the time within which the work shall be commenced and when to be completed, see infra, sec. 21 of this chapter. If a contractor fails to perform his work, or to enter upon the performance of the same within the time prescribed, the Board may readvertise for bids and relet the contract: Dougherty v. Foley, 32 Cal. 402; Himmelmann v. Oliver, 34 Cal. 246. The same course, however, must be pursued in reletting the contract for unfinished work as was followed in the first instance: Meuser v. Risdon, 36 Cal. 239, 244; though the steps necessary to obtain jurisdiction need not be repeated: Himmelmann v. Oliver, 34 Cal. 246, 247. Where nothing has been done under a contract let by the Board of Supervisors, they may renew the proceedings, obtain bids over again, and let a second contract, though to the same person, who was a competitive bidder for the work, without the second contract becoming invalid: Spaulding v. North San Francisco etc. R. R. As., 87 Cal. 40, 48; 24 Pac. Rep. 600; 25 Pac. Rep. 249.

Sec. 21. City Attorney to draw contracts. Contracts to be in triplicate; where filed. Bonds of contractors; surety on bonds; affidavit. Time to complete work; extension of time; penalty for failure to complete work.

Sec. 21. All contracts shall be drawn under the supervision of the City Attorney, and shall contain detailed specifications of the work to be done, the manner in which it shall be executed, and the quality of the material to be used.

Every contract entered into by the Board shall be signed by all the members thereof and by the other contracting party. All contracts shall be signed in triplicate, one of which, with the specifications and drawings, if any, of the work to be done, and the materials to be furnished, shall be filed with the Clerk of the Supervisors; one thereof, with said specifications and drawings, shall be kept in the office of the Board, and the other with said specifications and drawings shall be delivered to the contractor.

At the same time with the execution of the contract the contractor shall execute to the City and County and deliver to the Secretary of the Board a bond in the sum named in the notice for proposals, with two or more sufficient sureties to be approved by the Board, or shall deposit with the Secretary a certified check upon some solvent bank for said amount, for the faithful performance of the contract. No surety on any bond, other than lawfully authorized surety companies, shall be taken unless he shall be a payer of taxes on real property, the assessed value of which, over and above all encumbrances, is equal in amount to his liabilities on all bonds on which he may be security to the City and County; and each surety shall justify and make an affidavit (for which a form shall be printed upon said bond), signed by him, that he is assessed upon the last Assessment Book of the City and County in his own name for real property in an amount greater than his liability on all bonds on which he is surety to the City and County, and that the taxes on such property so assessed are not delinquent.

The contract shall specify the time within which the work shall be commenced, and when to be completed, as was specified in the notice inviting proposals therefor. Upon the recommendation of the Board, the Supervisors may extend said time; but in no event shall the time for the performance of said contract be extended by the Supervisors more than ninety days beyond the time originally fixed for its completion; but, on the unanimous recommendation of the Board of Public Works, a further extension may be granted by vote of fourteen members of the Board of Supervisors. In case of failure on the part of the contractor to complete his contract within the time fixed in the contract, or within such extension of said time as is herein provided, his contract shall be void, and the Supervisors shall not pay or allow to him any compensation for any work done by him under said contract; and, in the case of the improvement of streets, no assessment shall be made for the work done under said contract.

Requisites of the Contract. The contract must be in writing, and signed by the contractor: Schwiesau v. Mahon, 110 Cal. 543, 546;

42 Pac. Rep. 1065; but it need not follow the precise language of the statute: Emery v. San Francisco Gas Co., 28 Cal. 345, 377; Taylor v. Palmer, 31 Cal. 241, 245. It must be entered into within the time fixed by the statute: Perine v. Forbush, 97 Cal. 305, 309; 32 Pac. Rep. 226. The contract is void if it was entered into before the expiration of the time for publishing the notice of award: Burke v. Turney, 54 Cal. 486, 488; Manning v. Den, 90 Cal. 610, 616; 27 Pac. Rep. 435. Whenever it is agreed that work shall be performed according to certain specifications, which are annexed to the contract, the specifications are a part of the contract: Taylor v. Palmer, 31 Cal. 241, 246.

Owner as party. The owner of property adjacent to a street improvement is not, in any sense, a party to the contract between the contractor and the Superintendent of Streets: Dyer v. Barstow, 50 Cal. 652, 654; Heft v. Payne, 97 Cal. 108; 31 Pac. Rep. 844.

Validity of contract. The Board of Supervisors cannot make the contract payable in gold coin, but the awarding of the contract for payment in gold coin will not invalidate the contract in other respects; payment may be made in any kind of money which is by law a legal tender for the payment of any debts: Perine etc. Pav. Co. v. Quackenbush, 104 Cal. 684, 689; 38 Pac. Rep. 533. A clause in a contract for a street improvement, inserted for the purpose of relieving the Superintendent of Streets and his sureties from delinquency of persons and property assessed, is not authorized by the statute, and is probably void, as against public policy; but it does not affect or prejudice the rights of the property owner, and the contract is not void as to him, but he is liable for the amount of the assessment: McDonald v. Mezes, 107 Cal. 492, 494; 40 Pac. Rep. 808; Rauer v. Lowe, 107 Cal. 229, 235; 40 Pac. Rep. 337.

Same. Contract is void when. A provision in the contract that there shall be no assessment upon the adjoining property for improving that part of the street occupied by a railroad company, does not render the contract void: Perine v. Forbush, 97 Cal. 305, 310; 32 Pac. Rep. 226; but a requirement that the contractor shall give a bond with sureties, conditioned for keeping a street in repair for the term of five years from the completion of the contract, vitiates an assessment for the work done under the contract: Brown v. Jenks, 98 Cal. 10, 11; 32 Pac. Rep. 701. So a contract to put down Nicolson pavement is void, because it precludes all persons other than the owner of the patent for such pavement from bidding: Nicolson Pav. Co. v. Fay, 35 Cal. 695; Nicolson Pav. Co. v. Painter, 35 Cal. 699, 706. But see Dunne v. Altschul, 57 Cal. 472, 474; Perine etc. Pav. Co. v. Quackenbush, 104 Cal. 684, 687, showing that the Board of Supervisors has a right to contract for any kind of pavement in use, and the fact that the available methods of using bituminous rock for paving purposes are covered by patents, for the use of which the contractor must pay a royalty, does not affect the power of the Board to order paving done with bituminous rock prepared in a particular mode.

Specifications. As to sufficiency of specifications, see King v. Lamb, 117 Cal. 401, 405; 49 Pac. Rep. 561. If work is to be performed according to certain specifications, which are annexed to the contract, such specifications form a part of the contract: Taylor v. Palmer, 31 Cal. 240, 245; but plans and specifications do not constitute a necessary part of a resolution of intention; they are superfluous, and need not be followed: Fitzhugh v. Ashworth, 119 Cal. 393, 400; 51

Pac. Rep. 635. A contract, however, is void if it does not define the work to be done or refer to any specifications: Schwiesau v. Mahon, 110 Cal. 543, 546; 42 Pac. Rep. 1065. Where the specifications require work not mentioned in the resolution of intention, that fact does not vitiate the assessment, where such additional work is not mentioned in the contract, and it does not appear that such work was done or that any charge therefor was made in making up the assessment: Oakland Pav. Co. v. Rier, 52 Cal. 270, 276.

Same. Adoption of. In case of doubt as to the proper Board to adopt specifications for street-work, it would be advisable to pursue the procedure heretofore followed under the Vrooman Act, the Charter being silent on the matter. If it is possible, in such a case, to have both the Board of Public Works and the Board of Supervisors adopt specifications, it would be advisable to do so: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 342.

Contract must follow resolution and award. The contract is void if it does not follow the resolution of intention: Himmelmann v. Satterlee, 50 Cal. 68; City of Stockton v. Whitmore, 50 Cal. 554; Warren v. Chandos, 115 Cal. 382, 386; 47 Pac. Rep. 132; though the contractor can recover for such work as is named in the resolution, if it can be separated from the other and estimated: Beaudry v. Valdez, 32 Cal. 269, 276; Chambers v. Satterlee, 40 Cal. 497; Emery v. San Francisco Gas Co., 28 Cal. 346; Himmelmann v. Satterlee, 50 Cal. 69; Dyer v. Scalmanini, 69 Cal. 637; 11 Pac. Rep. 327; Rauer v. Lowe, 107 Cal. 229; 40 Pac. Rep. 337. A contract is also void if it does not follow the award: Dougherty v. Hitchcock, 35 Cal. 512; Brock v. Luning, 89 Cal. 316; 26 Pac. Rep. 972; Perine v. Forbush, 97 Cal. 305; 32 Pac. Rep. 226.

Same. Different kinds of work. "Macadamizing streets" and "curbing" sidewalks are distinct kinds of improvement; a contract may be valid so far as it calls for macadamizing, but invalid so far as it calls for curbing. Hence, under a resolution to "macadamize," a contract cannot be let for both macadamizing and curbing: Beaudry v. Valdez, 32 Cal. 269, 276. "Macadamizing" a street and the construction of sidewalks are also different kinds of work, and, under a resolution to "macadamize and curb" a street, a contract cannot be let for work upon the sidewalks: Himmelmann v. Satterlee, 50 Cal. 68, 70. Under a resolution to improve a street, or part of a street, the Board has no jurisdiction to let a contract to improve only a portion of the street included in the resolution of intention: City of Stockton v. Whitmore, 50 Cal. 554, 555. Under a resolution of intention to "macadamize" a street, a contract cannot be let for the construction of rock gutterways in the street to be macadamized: Partridge v. Lucas, 99 Cal. 519; 33 Pac. Rep. 1082.

Same. Enforcement of contract as an entirety. Where an assessment is sought to be enforced as an entirety, it must stand or fall as a whole: Partridge v. Lucas, 99 Cal. 519, 523; 33 Pac. Rep. 1082. If an assessment is made for "curbing and macadamizing" a street, and demand is made for payment of the entire assessment, the validity of the assessment as to the "macadamizing" vitiates it as to the "curbing": Dorland v. Bergson, 78 Cal. 637; 21 Pac. Rep. 537.

Commencement and completion of work. As to fixing of time for work, see Buckman v. Ferguson, 108 Cal. 33; 40 Pac. Rep. 1057; Rauer v. Lowe, 107 Cal. 229, 235; 40 Pac. Rep. 337. The statute requiring the Superintendent of Streets to fix the time for the commencement and completion of the work under all contracts entered into by him, is mandatory, and a contract not in accordance with its terms would be destitute of binding force: Libbey v. Elsworth, 97 Cal. 316, 317; 32 Pac. Rep. 228; Palmer v. Burnham, 120 Cal. 364; 52 Pac. Rep. 664.

Same. What is no excuse for non-performance. The contractor's failure to complete the work within the time allowed is not excused by the city's neglect to furnish implements as provided in the contract: Heft v. Payne, 97 Cal. 108, 109; 31 Pac. Rep. 844; nor by the fact that owners have expressly waived all objections to the contractor's failure: Heft v. Payne, 97 Cal. 108, 110; 31 Pac. Rep. 844; but that an action will lie upon a promise to waive defects, and to pay for work already done, in consideration of the contractor's doing additional work, see Bernstein v. Downs, 112 Cal. 197, 203; 44 Pac. Rep. 557.

Extension of time. As to extension of time within which work must be done, see Houston v. McKenna, 22 Cal. 550; Conlin v. Seaman, 22 Cal. 546; Taylor v. Palmer, 31 Cal. 240; Oakland Pav. Co. v. Barstow, 79 Cal. 45; Ede v. Knight, 93 Cal. 159; 28 Pac. Rep. 860. As to form of extending time, see Anderson v. De Urioste, 96 Cal. 404; 31 Pac. Rep. 266. Such extension of time must be granted within the life of the contract, in order to be valid: McVerry v. Boyd, 89 Cal. 304, 306; 26 Pac. Rep. 885; Brock v. Luning, 89 Cal. 316; 26 Pac. Rep. 972; Brady v. Burke, 90 Cal. 1; 27 Pac. Rep. 52; Kelso v. Cole, 121 Cal. 121; 53 Pac. Rep. 353. That the act of the City Council in setting aside the first assessment and warrant, and in directing further work, does not operate as an extension of time, see Heft v. Payne, 97 Cal. 108, 111; 31 Pac. Rep. 844.

Same. Extension not ineffectual when. The statute does not say that the extension shall not be effectual until it is indorsed upon the contract, and a failure to indorse it or to record the resolution of intention does not, therefore, render the extension ineffectual: McVerry v. Boyd, 89 Cal. 304, 307; 26 Pac. Rep. 885; Ede v. Knight, 93 Cal. 159, 161; 28 Pac. Rep. 860; Buckman v. Landers, 111 Cal. 347; 43 Pac. Rep. 1125. As to effect of extension of time made after expiration of time limit in contract, see Raisch v. San Francisco, 80 Cal. 1; 22 Pac. Rep. 22.

Agent of city. When the Superintendent of Streets enters into a written contract with a contractor to do work for the City and County, ordered by the Board of Supervisors, he acts as the agent of the city: Chambers v. Satterlee, 40 Cal. 497, 527.

Recording of contract. A requirement that the due performance of the contract shall be made a matter of record by the Superintendent of Streets is directory only, and a failure to comply with it does not invalidate the assessment: Brady v. Bartlett, 56 Cal. 350. A contractor's rights are not affected by the failure of the Superintendent of Streets to record the contract at the proper time: Wells v. Wood, 114 Cal. 255, 257; 46 Pac. Rep. 96.

Assignment of contract. Its effect. Assignability of assessment, see Charter, post, art. VI, chap. II, sec. 15, note. A contract to perform work on a street is assignable, whether consented to by the municipality or not: Anderson v. De Urioste, 96 Cal. 404, 407; 31 Pac. Rep. 266; Bernstein v. Downs, 112 Cal. 197; 44 Pac. Rep. 557; Wetmore v. San Francisco, 44 Cal. 294. The assignee takes the contract cum onere: Rauer v. Fay, 110 Cal. 361, 368; 42 Pac. Rep. 902. The assignor, after assigning his contract, is estopped from denying its validity: Callender v. Patterson, 66 Cal. 356: and may be sued by the assignee: Hendrick v. Crowley, 31 Cal. 471.

Hours of labor. As to power of Supervisors to fix hours of labor, see Charter, ante, art. II, chap. II, sec. 1, subd. 24. That every contract for City and County work shall have the eight-hour clause, see Charter, ante, art. II, chap. III, sec. 1. Where the contractor has performed all the conditions of the contract, it is not material, in an action to foreclose a lien for a street assessment, that the contract provided that eight hours should constitute a legal day's work for all persons employed: Williams v. Savings and Loan Soc., 97 Cal. 122, 123; 31 Pac. Rep. 908.

Same. Purpose of Charter. The purpose of the Charter provision is to limit the hours of labor of any one man to eight hours in any one calendar day upon the city's contract work; and it is the duty of the Board of Public Works to provide in all contracts for a maximum working-day of eight hours upon such work: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 474, 477. See art. II, chap. III, sec. 1; art. II, chap. II, sec. 1, subd. 24.

Same. Violation of provision. Remedy. Where a contractor is violating the eight-hour provision of the Charter, the contract should be treated as avoided by the act of the contractor, and a report of this conclusion should be made to the Board of Public Works and to the Auditor. The Charter does not state that a breach of the contract will work a forfeiture thereof, but there seems to be no other way of enforcing compliance with such provisions, except by treating their breach as a dissolution of the contract: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 546. See art. II, chap. III, sec. 1; art. II, chap. II, sec. 1, subd. 24.

Form of bond. See Schwiesau v. Mahon, 110 Cal. 543, 546; 42 Pac. Rep. 1065.

Omission to approve bond. Effect of. An omission of the Superintendent of Streets to approve the bond of the contractor forms no basis for the property owner to object to the correctness of the assessment: Miller v. Mayo. 88 Cal. 568; 26 Pac. Rep. 364.

Public buildings. Separate contracts. Subdivisions. The work on public buildings may be divided, and a corresponding number of separate contracts let for such subdivisions; because, where no express and exclusive mode is provided by law, a municipality may adopt any convenient and desirable form of contract; and there appears to be nothing in the Charter which forbids the letting of contracts in such manner: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 293. 294.

Same. Partial payments. There is no law expressly forbidding partial or progressive payments on contracts. This section might seem, by implication, to forbid all payments until the entire structure or work is completed, but the object of the provision is not primarily to fix the method of payment, but to insure timely performance of contract work. The obvious purpose is to prevent payment until the work for which the payment is to be made has been actually completed; and it is plain that if the contract provided that a certain portion of the work should be finished in a stated time and the work was so finished, that the contract would have been complied with as to such work, and the object of the statute would then have been fully accomplished as to that portion of the work. Hence, the section does not necessarily prevent what might be termed partial payments: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 293, 294, 295.

Sec. 22. Work must be satisfactory to the Board. Certificate of satisfactory work.

Sec. 22. The work in this Article provided for must be done under the direction and to the satisfaction of the Board of Public Works; and the materials used must be in accordance with the specifications and be to the satisfaction of said Board, and all contracts provided for in this Article must contain a provision to that effect, and also, that in no case, except where it is otherwise provided in this Charter, will the City and County, or any department or officer thereof, be liable for any portion of the expense, or in the case of improvement of streets, for any delinquency of persons or property assessed.

When said work shall have been completed to the satisfaction and acceptance of the Board, it shall so declare by resolution, and thereupon the Board shall deliver to the contractor a certificate to that effect.

Satisfaction of Superintendent of Streets. As to the necessity of Engineer's certificate to make street assessment valid, see ante, sec. 11 of this chapter. A lot-owner cannot prove that work done to the satisfaction of the Superintendent of Streets was not done according to the specifications: Emery v. Bradford, 29 Cal. 75; McVerry v. Kidwell, 63 Cal. 246; Warren v. Riddell, 106 Cal. 352; 39 Pac. Rep. 781; Diggins v. Hartshorne, 108 Cal. 154; 41 Pac. Rep. 283; his remedy is by appeal to the Board of Supervisors: Emery v. Bradford, 29 Cal. 75; Cochran v. Collins, 29 Cal. 130; Shepard v. McNeil, 38 Cal. 72; Jennings v. Le Breton, 80 Cal. 8; 21 Pac. Rep. 1127; Warren v. Riddell, 106 Cal. 352; 39 Pac. Rep. 781; Diggins v. Hartshorne, 108 Cal. 154; 41 Pac. Rep. 283; Smith v. Hazard, 110 Cal. 145; 42 Pac. Rep. 465; Girvin v. Simon, 116 Cal. 604; 28 Pac. Rep. 720. The assessment and warrant in due form are prima facie evidence that the work was completed to the satisfaction of the Superintendent of Streets, and that he approved and accepted the same: Jennings v. Le Breton, 80 Cal. 8; 21 Pac. Rep. 1127.

CHAPTER II.

Improvement of Streets.

Sec. 1. Open public streets, etc., what are. Width and grade.

Section 1. All streets, lanes, alleys, places or courts, in the City and County now open or dedicated or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, lanes, alleys, places or courts, for the purposes of this Chapter; and the Supervisors are hereby empowered to fix the width and grade thereof, and to order to be done therein and thereon any and all street work and street improvement under the proceedings hereinafter described.

Proposed constitutional amendment concerning the powers of San Francisco as to streets, parks, boulevards, etc. On June 12, 1906, there was adopted a resolution to propose to the people of the State an amendment to the Constitution of the State, amending article XI thereof by adding thereto a new section, to be numbered 20, relating to the conferring, for the period of two years, of certain powers and rights on the City and County of San Francisco relative to streets, parks, boulevards, reservoirs, and lands now owned or hereafter acquired by it, and the uses thereof: See Assembly Constitutional Amendment No. 2, Stats. 1906, p. 91. We are not aware, however, that anything has since been done in the matter.

References. For provisions of the act of March 18, 1885, and its amendments, commonly known as the Vrooman Act, Stats. 1885, p. 147, see **Henning's General Laws**, pp. 1311-1370. As to construction of section 3 of the Vrooman Act, see City Street Imp. Co. v. Babcock, 139 Cal. 690; 73 Pac. Rep. 666. As to construction of the Vrooman Act upon various questions, see O'Dea v. Mitchell, 144 Cal. 374; 77 Pac. Rep. 1020; Haughawout v. Raymond, 148 Cal. 311; 83 Pac. Rep. 53. That the lien provided for in the Street Bond Act of March 9, 1893, **Henning's General Laws**, pp. 1339, 1341, is prior to all other liens, see German Sav. and Loan Soc. v. Ramish, 138 Cal. 120; 69 Pac. Rep. 89; 70 Pac. Rep. 1067. As to construction of the Street Bond Act of March 9, 1893, **Henning's General Laws**, pp. 1339, 1346, see German Sav. and Loan Soc. v. Ramish, 138 Cal. 120; 69 Pac. Rep. 89; 70 Pac. Rep. 1067; Chase v. Trout, 146 Cal. 350; 80 Pac. Rep. 81; Creed v. McCombs, 146 Cal. 449; 80 Pac. Rep. 679.

Street law. Vrooman Act. The street law of the Charter is in great part the Vrooman Act as amended. Under this act it has been the custom to grant permits to pave with bituminous rock, and wherever contracts involving the doing of street-work by private contract have come before the courts, they have been upheld as valid: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 178. See also Charter, ante, art. VI, chap. I, sec. 7, as to whom the Board of Public Works succeeded. The Vrooman Act superseded the Consolidation Act, and became the governing law of the City and

County of San Francisco as to all matters provided for in that act: See Anderson v. De Urioste, 96 Cal. 404; 31 Pac. Rep. 266. The Vrooman Act, Stats. 1885, p. 147, **Henning's General Laws,** pp. 1311-1370, is a general law, and applicable to the City and County of San Francisco: Thomason v. Ruggles, 69 Cal. 465; 11 Pac. Rep. 20. That the Vrooman Act is constitutional, see Sacramento Pav. Co. v. Anderson, 1 Cal. App. Rep. 672; 82 Pac. Rep. 1069; and in force in Los Angeles: Banaz v. Smith, 133 Cal. 102; 65 Pac. Rep. 309. The Vrooman Act, **Henning's General Laws**, p. 1311, and the Change of Grade Act, Stats. 1893, p. 89, **Henning's General Laws,** pp. 1332-1337, are to be treated as in pari materia: German Sav. and Loan Soc. v. Ramish, 138 Cal. 120; 69 Pac. Rep. 89; 70 Pac. Rep. 1067.

Power of Supervisors. The Board of Supervisors has exclusive power to make improvements of streets in the City and County, but has no power to delegate to any other officers or body the authority to determine upon the necessity of making such improvements, or the character or extent of any improvement which it may itself direct to be made: Bolton v. Gilleran, 105 Cal. 244, 247; 38 Pac. Rep. 881. Where streets, or portions thereof, have been accepted, the Supervisors have power to provide for their paving, and the expense thereof may be borne by the municipality; but there is no provision in the Charter, or elsewhere, which authorizes the exaction of a "maintenance" bond guaranteeing the work for a definite length of time, and such a bond is clearly unauthorized: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 419, 420, 421; Brown v. Jenks, 98 Cal. 10; 32 Pac. Rep. 701; Alameda Macadamizing Co. v. Pringle, 130 Cal. 226; 62 Pac. Rep. 394.

Purpose of Charter. Character of work. It has been decided several times that the Board must specify, in the resolution of intention, the work to be done, and that it is not sufficient to declare its intention to cause certain repairs to be made "where necessary." The object of the Charter provision, as of the general statute, is to make the amount and character of the work as definite and certain as possible: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 419, 425. See Charter, post, art. VI, chap. II, sec. 3, note, "Resolution of intention. When not sufficient."

Bids. Coupling propositions. Rejection. If it is still undecided, when bids are called for, whether asphalt or bituminous paving shall be laid, both materials should not be coupled in the same proposition. A party should at least be permitted to bid separately on either one or the other, and not be required to bid on both or none. In such case the bids relating to the material which is not desired may be rejected as a whole, leaving the bids on the chosen material to be acted upon, thus avoiding unnecessary complications: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 419, 423.

Sec. 2. Application; Board to recommend work; sewer-work by ordinance; disapproval of Board. Recommendation of Board to Supervisors. Work must be approved by Board. Street crossings; map.

Sec. 2. Application for the doing of any such work or improvement must in the first instance, except where otherwise provided in this Article, be made in writing to the Board of Public Works by an owner or owners of property liable to be assessed for the same, or by their agents, or by the Board of Health for sanitary reasons, or by the Supervisors, expressed by resolution.

Such application need but in general describe or refer to the work or improvement applied for; and if the expense thereof or any portion of such expense is to be assessed upon private property, the Board of Public Works shall investigate the same, and may modify, amend, alter, or increase the same, as it may deem proper; and if the Board determine that the work or improvement so applied for, or as so modified, amended, altered or increased, is expedient, it shall so report to the Supervisors; the Supervisors shall not order any such improvement until the same has been recommended by said Board. When the construction of any sewer or drain shall involve a cost of more than five dollars per lineal foot for any block, it shall not be authorized except by an ordinance passed by the affirmative vote of not less than fourteen members of the Board of Supervisors. If an application is made for any work or improvement of which the expense is to be paid by the City and County, and the Board of Public Works shall not approve of such application, it shall report to the Supervisors its reasons for such disapproval, and the Supervisors may then, after having obtained from the Board of Public Works an estimate of the expense of said work or improvement, by ordinance passed by the affirmative vote of not less than fourteen members of the Board of Supervisors, order the doing of said work, or the making of said improvement.

The Board of Public Works may also, except as herein prohibited, recommend any improvement, the expense of which is to be paid by the City and County, though no application may have been made therefor, and must make, with said recommendation to the Supervisors, an estimate of the expense, and in such case the Supervisors may order the same done.

No street work or street improvements of any kind shall be ordered to be done by the Supervisors unless a written recommendation to do the same has been made to them by the Board of Public Works, except in the case hereinbefore provided, and all such recommendations shall be made matters of records in the office of said Board.

When the Board shall recommend any work to be done on a street intersection or crossing, where the streets do not intersect each other at right angles, it shall in each such case determine what lots in the blocks adjacent to such intersection or crossing will be benefited by said work, and shall cause a map to be made on which shall be delineated the lots so to be benefited. Such map shall be transmitted to the Supervisors with said recommendation. [Amendment approved, and in effect, February 5, 1903.]

Amended section. The amended section read as follows: Sec. 2. Application for the doing of any such work or improvement must in the first instance, except where otherwise provided in this article, be made in writing to the Board of Public Works; and if the expense thereof is to be assessed upon private property, the Board shall investigate the same; and if it determine that such improvement is expedient, it shall so report to the Supervisors; and the Supervisors shall not order any such improvement until the same has been recommended by said Board. When the construction of any sewer or drain shall involve a cost of more than five dollars per lineal foot for any block, it shall not be authorized except by an ordinance passed by the affirmative vote of not less than fourteen members of the Board of Supervisors. If an application is made for any work or improvement of which the expense is to be paid by the City and County, and the Board of Public Works shall not approve of such application, it shall report to the Supervisors its reasons for such disapproval, and the Supervisors may then, after having obtained from the Board of Public Works an estimate of the expense of said work or improvement, by ordinance passed by the affirmative vote of not less than fourteen members of the Board of Supervisors, order the doing of said work, or the making of said improvement.

The Board of Public Works may also, except as herein prohibited, recommend any improvement, the expense of which is to be paid by the City and County, though no application may have been made therefor, and must make, with said recommendation to the Supervisors, an estimate of the expense, and in such case the Supervisors may order the same done.

No street work or street improvements of any kind shall be ordered to be done by the Supervisors unless a written recommendation to do the same has been made to them by the Board of Public Works, and all such recommendations shall be made matters of record in the office of said Board.

When the Board shall recommend any work to be done on a street intersection or crossing, where the streets do not intersect each other at right angles, it shall in each such case determine what lots in the blocks adjacent to such intersection or crossing will be benefited by said work, and shall cause a map to be made on which shall be delineated the lots so to be benefited. Such map shall be transmitted to the Supervisors with said recommendation.

Application or petition. Where a petition from the property owners, or recommendation by the Superintendent of Streets, is required, the Board cannot, without it, acquire jurisdiction to order the work done: Gately v. Leviston, 63 Cal. 365; Spaulding v. North San Francisco etc. R. R. As., 87 Cal. 40; 24 Pac. Rep. 600; 25 Pac. Rep. 249. As to when it is necessary to jurisdiction that there should be a petition by the owners, see Spaulding v. Wesson, 84 Cal. 141; 24 Pac. Rep. 377.

Estimate of work. Whether required. That the Vrooman Act does not seem to require as a prerequisite that the City Council shall have an estimate of street-work before it passes the resolution of intention, unless the Council shall be desirous of issuing serial bonds for the work or to place the work in a district, see Sacramento Pav. Co. v. Anderson, 1 Cal. App. Rep. 672, 673; 82 Pac. Rep. 1069.

Sec. 3. Street-improvement resolution. Notice of street-work to be posted and mailed. Notices to be posted along line of improvement.

Sec. 3. Before recommending to the Supervisors the ordering of any work or improvement, the expense of which, or any part thereof, is to be assessed upon private property, the Board of Public Works shall pass a resolution of its intention to recommend the same, specifying the work to be recommended, and shall fix a day when it shall take final action upon said resolution.

Upon the passage thereof the Secretary of the Board shall forthwith, without any further authority, cause a copy of said resolution to be posted conspicuously for five days in the office of said Secretary, and to be published for a period of ten days (legal holidays excepted) and cause a copy to be deposited in the Post Office at the City and County, with postage prepaid, addressed to each person represented on the Assessment Book of the City and County for the next preceding fiscal year as being owner of land liable to be assessed for said improvement; but if said lot stand on said book in the name of unknown owners, such notice need not be sent.

The Board shall also cause to be conspicuously posted along the line of said contemplated improvement, at points not more than one hundred feet in distance apart, notices, not less than three in all, of the passage of said resolution.

Each of said notices shall be headed "Notice of Street Work" in letters of not less than two inches in length, and shall in legible characters state the fact of the passage of said resolution, its date, and, briefly, the work or improvement proposed, and refer to the resolution of intention for further particulars.

References. As to identification of resolution of intention, see Dowling v. Hibernia etc. Soc., 143 Cal. 425; 77 Pac. Rep. 141. As to resolution of intention to construct sewer, see Banaz v. Smith, 133 Cal. 102; 65 Pac. Rep. 309.

Resolution of intention. In general. The passage and publication of the resolution of intention are acts by which the Board acquires jurisdiction. By those acts it acquires jurisdiction to make only such improvements as are described in the resolution, and it cannot, therefore, lawfully cause work, other than that which is described, to be performed: Partridge v. Lucas, 99 Cal. 519; 33 Pac. Rep. 1082. A printed signature of the clerk to the resolution of intention seems to be unobjectionable, where he has, for convenience, adopted a printed form for his signature: Williams v. McDonald, 58 Cal. 527, 529.

Same. Presentment to Mayor. As to necessity of presenting the resolution of intention to the President of the Board for his approval, see Creighton v. Manson, 27 Cal. 614; Beaudry v. Valdez, 32 Cal. 269; McDonald v. Dodge, 97 Cal. 112; 31 Pac. Rep. 909. An award of a contract for street improvement may be approved first by a three-fourths vote of the City Council before presentment of the award to the Mayor: Greenwood v. Morrison, 128 Cal. 350, 352; 60 Pac. Rep. 971. A resolution of intention to improve a street, and the resolution ordering the work done, need not be presented to the Mayor for his approval, unless the Charter requires it: Sacramento Pav. Co. v. Anderson, 1 Cal. App. Rep. 672, 673; 82 Pac. Rep. 1069.

Same. Other work. Excepting work already done. As to what may be included in the same resolution of intention, see Bates v. Twist, 138 Cal. 52; 70 Pac. Rep. 1023. Where a contract for street-work is, in its nature, divisible, and such contract includes work not named in the resolution, the contract is good as to the work therein named, if it can be separated from the other and estimated without injury: Chambers v. Satterlee, 40 Cal. 497, 530; Himmelmann v. Satterlee, 50 Cal. 68. For construction of subd. 11, sec. 7, of the Street Improvement Act, see Stats. 1891, p. 204; as to authority of City Council to except from its resolution of intention work already done, etc., see San Francisco Pav. Co. v. Dubois, 2 Cal. App. Rep. 42, 44; 83 Pac. Rep. 72.

Same. Publication of. As to publication and service of all notices and resolutions required in this article, see Charter, post, art. VI, chap. II, sec. 26. As to the time for ordering work after a resolution of intention has been declared, as to posting of notices, and as to the public declaration of proposals, see City Street Imp. Co. v. Laird, 138 Cal. 27; 70 Pac. Rep. 916. As to the effect of obscurities in printed notice of resolution given by the Superintendent of Streets, see Warren v. Russell, 129 Cal. 381; 62 Pac. Rep. 75. As to publication of award of contract for constructing sewer, see Banaz v. Smith, 133

Cal. 102; 65 Pac. Rep. 309. The notice of award of contract for improving a street must be published by authority of the Board: Donnelly v. Tillman, 47 Cal. 40; Donnelly v. Marks, 47 Cal. 187. The newspaper in which a resolution of intention for street-work should be published need not be designated by separate order. It is sufficient if the resolution of intention itself contains such designation: King v. Lamb, 117 Cal. 401, 403; 49 Pac. Rep. 561. A failure to publish a resolution for the length of time required by law renders the assessment void: Brady v. Burke, 90 Cal. 1, 7; 27 Pac. Rep. 52.

Same. Notice of. As to the necessity of a notice of resolution of intention, see Washburn v. Lyons, 97 Cal. 314; 32 Pac. Rep. 310. As to contents of the notice of street-work, see Perine v. Erzgraber, 102 Cal. 234; 36 Pac. Rep. 585; Vincent v. Pacific Grove, 102 Cal. 405; 36 Pac. Rep. 773; White v. Harris, 116 Cal. 470; 48 Pac. Rep. 382. As to when notice of resolution is to be posted, see Porphyry Pav. Co. v. Ancker, 104 Cal. 340; 37 Pac. Rep. 1050. As to where the notice of resolution is to be posted, see Miller v. Mayo, 88 Cal. 568; 26 Pac. Rep. 364. As to the sufficiency of posting notices under the Vrooman Act, see Sacramento Pav. Co. v. Anderson, 1 Cal. App. Rep. 672, 675; 82 Pac. Rep. 1069. As to the sufficiency of affidavit of posting notices of street-work, see Dowling v. Hibernia etc. Soc., 143 Cal. 425; 77 Pac. Rep. 141. It is not necessary that the resolution of intention, if posted, shall contain the names of the trustees voting for or against it: King v. Lamb, 117 Cal. 401, 404; 49 Pac. Rep. 561. A notice need not refer to a resolution of intention for further particulars, where it contains the whole resolution and states the date and fact of its passage: Schmidt v. Market Street etc. R. R. Co., 90 Cal. 37; 27 Pac. Rep. 61. As to the sufficiency of the publication of notice, see Smith v. Hazard, 110 Cal. 145; 42 Pac. Rep. 465.

Same. When sufficient. As to sufficiency of description of work to give the Board jurisdiction to order improvement, see Williams v. Bergin, 116 Cal. 56, 59; 47 Pac. Rep. 877; San Jose Imp. Co. v. Auzerais, 106 Cal. 498; 39 Pac. Rep. 859. One resolution may include different kinds of work: Emery v. San Francisco Gas Co., 28 Cal. 346; Dyer v. Hudson, 65 Cal. 374; 4 Pac. Rep. 231; but the work to be done must be described in the resolution of intention: Brady v. King, 53 Cal. 44. Work is sufficiently described where the resolution declares that the street will be graded and macadamized from one designated point to another: Emery v. San Francisco Gas Co., 28 Cal. 345. It is also sufficiently described where the resolution provides that a crossing be planked and that the angular corners thereof be reconstructed: Deady v. Townsend, 57 Cal. 298, 299. The statute requires only an intelligible description of the work, sufficient to notify owners of the lots fronting on the proposed improvement of the nature and extent of the work of which the improvement is to consist: Wells v. Wood, 114 Cal. 255, 256; 46 Pac. Rep. 96. The statute imposes upon a railroad company having its track on a street in the city the obligation "to plank, pave, or macadamize the entire length of the street used by its track, between the rails, and for two feet on each side thereof, and between the tracks if there be more than one, and to keep the same constantly in repair," etc.; and a provision, "except that portion required by law to be kept in order by the railroad company having its tracks thereon," does not destroy all certainty as to the particular portion which the Board intended should be planked at the expense of the property owners: Whiting v. Townsend, 57 Cal. 515, 518. The resolution of intention need not contain a complete plan and specifications of the proposed improvement; nor need it describe the work with any more exactness than it is described by the law itself: Harney v. Heller, 47 Cal. 15, 17; Fitzhugh v. Ashworth, 119 Cal. 393; 51 Pac. Rep. 635. As to sufficient resolution of intention, see Perine v. Lewis, 128 Cal. 236, 239; 60 Pac. Rep. 422, 472. As to sufficiency of description in street-improvement cases, see Blanchard v. Ladd, 135 Cal. 214; 67 Pac. Rep. 131.

Same. When not sufficient. A resolution of intention which provides that the street shall be repaired "where necessary," is insufficient, and confers no jurisdiction: Randolph v. Gawley, 47 Cal. 458; Himmelmann v. McCrelly, 51 Cal. 562. A resolution to "macadamize and curb" does not include work on the sidewalks, but is limited to that to be done on the roadway: Dyer v. Chase, 52 Cal. 440, 441; Himmelmann v. Satterlee, 50 Cal. 68. A resolution of intention which fails to describe the work as required by law is insufficient and fails to confer jurisdiction on the Board to order the work, and the assessment therefor creates no lien upon the property: Buckman v. Hatch, 139 Cal. 53; 72 Pac. Rep. 445.

Sec. 4. Owners may make written objections; bar for six months. Construction of sewers; hearing of objections; continuance of proceedings. Institution of proceedings for proposed work notwithstanding objections. Petition of remonstrance.

Sec. 4. The owners of a majority of the frontage of the property fronting on said proposed work or improvement, where the same is for one block, or more, and, in the case of a district, those owning more than one-half of the superficial area of the district, exclusive of street surface, may make written objections to the same within ten days after the expiration of the time of the publication of said resolution of intention, which objections shall be delivered to the Secretary of the Board of Public Works, who shall indorse thereon the date of their reception by him. Such objections shall delay for six months any further proceedings in relation to the doing of said work or making said improvement, under the said resolution of intention, unless the owners of the one-half or more of the frontage or of the district, as aforesaid, shall meanwhile petition for the same to be done, and thereupon the proceedings shall be continued under the said resolution of intention, if said Board shall deem proper.

If, however, the owners of at least two-thirds of the property fronting on said proposed work or improvement, and, in case of a district, those owning at least two-thirds of the superficial area of the district, exclusive of street surface, shall make written objections to the said proposed work or improvement, after the expiration of the time hereinbefore fixed for making the objections in the first instance to the same (and which objections delayed for six months any further procedings in relation to the doing of said work or making said improvement under said resolution of intention) and before the expiration of the said six months, no further proceedings shall be taken under the said resolution of intention. But if no such objections have been made, then the Board of Public Works, after the expiration of said six months, shall, if it deem proper, continue the proceedings under the resolution of intention aforesaid, notwithstanding the objections first made, as hereinbefore provided, or any further objections to the doing of said work or making said improvement.

But when the work or improvement proposed to be done is the construction of sewers, manholes, culverts, drains, cess-pools, catch basins or storm water inlets, or of sidewalks, or of curbs, or any work or improvement on a street crossing, or on a street intersection, and written objections thereto have been delivered to the Secretary of the Board of Public Works within the time hereinbefore provided, by the owners of a majority of the frontage or of the district aforesaid, and in case of work or improvement on a street crossing or a street intersection, by the owners of a majority of the street frontage liable to be assessed therefor, the Board shall, at its next meeting, fix a time for hearing said objections, not less than one week thereafter. The Secretary of the Board shall thereupon notify the persons making such objections by depositing a notice thereof in the Post Office at the City and County, postage prepaid, and addressed to each objector or his agent when he appears for such objector. At the time specified the Board shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive; and if said objections are overruled the proceedings shall be continued as though no objections had been made.

And when not more than two blocks on a street, including street crossings, remain ungraded to the official grade, or otherwise unimproved, in whole or in part, and a block or more on each side upon such street has been so graded or otherwise improved, or when not more than two blocks at the end of a street remain so ungraded or otherwise unimproved. proceedings for the doing of any work or improvement, upon said intervening ungraded or unimproved part of said street, or at the end of a street, shall not be stayed or prevented by any written or other objections, unless the Board shall deem proper.

And if one-half or more in width or in length, or as to grading, one-half or more of the grading work, of any street lying and being between two successive main street crossings, or if a crossing has been already partially graded or improved, as aforesaid, the Board may proceed as in this Chapter provided, to have the remainder improved, graded, or otherwise, notwithstanding any objections of property owners.

In all cases of work or improvement in this section hereinbefore provided, where the Board of Public Works is vested with power to continue proceedings in relation to any proposed work or improvement, notwithstanding any objections of property owners to the doing of the same, the Board may determine that such work or improvement is expedient, or that the public interest or convenience requires the doing of the same, and it may institute proceedings therefor and the provisions of Section 2 of this Chapter, requiring a written application to the Board in the first instance, to be made therefor, shall not be applicable thereto.

At any time before the making of the assessment as hereinafter provided, all owners of lots of land liable to assessment therein, who, after the first publication of the aforesaid resolution of intention, may feel aggrieved, or who may have objections to any proceedings in relation to the performance of the work described in said resolution, may file with the Secretary a petition of remonstrance, wherein they shall state in what respect they feel aggrieved, or the proceedings to which they object. Such petition of remonstrance shall be passed upon by the Board, and its decision thereon shall be final and conclusive. [Amendment approved, and in effect, February 5, 1903.]

Amended section. The amended section read as follows: Sec. 4. The owners of a majority of the frontage of the property fronting on said proposed work or improvement, and, in the case of a district, those owning more than one-half of the superficial area of the district, may make written objections to the same within ten days after the expiration of the time or the publication of said resolution of intention, which objections shall be delivered to the Secretary of the Board of Public Works, who shall endorse thereon the date of its reception by him. Such objections shall be a bar for six months to any further proceedings in relation to the doing of said work or making said improvement, unless the owners of the one-half or more of the frontage or of the district, as aforesaid, shall meanwhile petition for the same to be done, and the same shall, after the expiration of said six months, be continued under the resolution of intention first passed if said Board shall deem proper. If, however, the owners of at least two-thirds of the property fronting on said proposed work or improvement, and, in the case of a district, those owning at least two-thirds of the superficial area of the district, shall make written objections to the same within said six months, no further proceedings shall be taken under the aforesaid resolution of intention.

When the work or improvement proposed to be done is the construction of sewers, manholes, culverts or cess-pools, and the objections thereto are signed by the owners of a majority of the frontage or of the district as aforesaid, the Board shall, at its next meeting, fix a time for hearing said objections, not less than one week thereafter. The Secretary shall thereupon notify the persons making such objections, by depositing a notice thereof in the Post Office at the City and County, postage prepaid, and addressed to each objector or his agent when he appears for such objector. At the time specified the Board shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive; and if said objections are overruled the proceedings shall be continued as though no objections had been made.

At any time before the making of the assessment as hereinafter provided, all owners of lots of land liable to assessment therein, who, after the first publication of the aforesaid resolution of intention, may feel aggrieved, or who may have objections to any proceedings in relation to the performance of the work described in said resolution, may file with the Secretary a petition of remonstrance, wherein they shall state in what respect they feel aggrieved, or the proceedings to which they object. Such petition or remonstrance shall be passed upon by the Board, and its decision thereon shall be final and conclusive.

References. As to filing of protest, proof of filing, time of filing, and hearing of protest, see Thomason v. Carroll, 132 Cal. 148; 64 Pac. Rep. 262. As to filing of objections, indorsements, and authentications, see City Street Imp. Co. v. Babcock, 139 Cal. 690; 73 Pac. Rep. 666. As to the sufficiency of objections of property holders, see Pacific Pav. Co. v. Gallett, 137 Cal. 174; 69 Pac. Rep. 985. As to when protest is insufficient, see Alameda Macadamizing Co. v.

Williams, 70 Cal. 534. As to form and contents of protest, see Los Angeles L. Co. v. Los Angeles, 106 Cal. 156; 39 Pac. Rep. 535. As to determination of question whether a "majority of the frontage" signed the protest or not, see Spaulding v. North San Francisco etc. R. R. As., 87 Cal. 40; 24 Pac. Rep. 600; 25 Pac. Rep. 249.

Derivation of section. This section of the Charter is modeled after section 3 of the Vrooman Act, Stats. 1885, p. 147, as amended, with two material differences: 1. The section of the Vrooman Act applied to improvements covering one block or more, and the Charter provision applies to improvements without limitation as to length; and 2. The section of the Vrooman Act precluded the continuance of such proceedings under the same resolution of intention, while the Charter permits such proceedings, "unless two-thirds of the frontage objects," to be carried to completion under the same resolution of intention after the expiration of six months: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 298, 300; City Street Imp. Co. v. Babcock, 123 Cal. 205; 55 Pac. Rep. 762.

Written objections, or protest. In general. Right of protest is statutory: City Street Imp. Co. v. Laird, 138 Cal. 27; 70 Pac. Rep. 916. The Board must determine the question as to whether the protest and objection were signed by a "majority of the frontage": Pacific Pav. Co. v. Geary, 136 Cal. 373; 68 Pac. Rep. 128. A statute as to protests by persons owning a majority of frontage has no application to a street improvement which is merely for a crossing at the intersection of two streets: City Street Imp. Co. v. Rontet, 140 Cal. 55; 73 Pac. Rep. 729. A protest is not rendered ineffectual by reason of the fact that it was signed by only one of several co-tenants of a lot of land fronting upon the proposed improvement, and it is sufficient for the purpose of protest if the name of one co-tenant is signed by another co-tenant in his presence: Los Angeles L. Co. v. Los Angeles, 106 Cal. 156; 39 Pac. Rep. 535. The protest, or written objections of the property owners, displaces the prima facie proof of regularity made by the warrant, assessment, and diagram, and throws upon the plaintiff the burden of showing that the bar effected by the objections has been removed: Dougherty v. Harrison, 54 Cal. 428, 429. A protest not asserted within the ten days prescribed by the street law gives no jurisdiction in the premises to the Board: Warren v. Russell, 129 Cal. 381; 62 Pac. Rep. 75.

Same. Suspension or loss of jurisdiction. A protest against a street improvement consisting of curbs and sidewalks suspends the jurisdiction of the Board to order the laying of the curbs until the objections thereto are heard; and the ordering of work included in separate resolutions cannot deprive owners of the right to protest against either of the items: Gray v. Burr, 138 Cal. 109; 70 Pac. Rep. 1068. The effect of a protest and objection is to work a loss of jurisdiction: Pacific Pav. Co. v. Geary, 136 Cal. 373, 374; 68 Pac. Rep. 1028. When the time for the completion of a contract has expired, and the work has not been performed, the contract ceases to have any vitality, and jurisdiction to extend it or to levy an assessment thereon becomes extinct: John Kelso Co. v. Gillette, 136 Cal. 603, 604; 69 Pac. Rep. 296. A timely protest not only operates to suspend the jurisdiction of the Board to proceed with the improvement for the period of six months, but it also precludes the further ordering of work to be done without the passage of a new resolution of intention therefor, and no lien can be created by the assessment for the work without such new resolution: City Street Imp. Co. v. Babcock, 123 Cal. 205; 55 Pac. Rep. 762; Union Pav. etc. Co. v. McGovern, 127 Cal. 638; 60 Pac. Rep. 169; Thomason v. Carroll, 132 Cal. 148; 64 Pac. Rep. 262; Pacific Pav. Co. v. Gallett, 137 Cal. 174; 69 Pac. Rep. 985; Pacific Pav. Co. v. Sullivan Estate Co., 137 Cal. 261; 70 Pac. Rep. 86.

Same. Bar of proceedings. A written objection is an absolute bar to the work, unless such objection is disallowed: Pacific Pav. Co. v. Geary, 136 Cal. 373; 68 Pac. Rep. 1028. When a portion of a block has been improved, and a resolution of intention is passed for the improvement of the remaining portion of said block, objections filed by a majority frontage of the portion in front of which the improvement is contemplated will bar further proceedings for six months: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 298, 299.

Same. Continuance or discontinuance. What determines. It is the number of feet frontage in the proposed work or improvement that determines the question of continuing or discontinuing the work, and not the ownership of the land: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 298, 299.

Same. Work done after loss of jurisdiction. Work done after the Board has lost jurisdiction, and without a new resolution of intention, is unauthorized, and an assessment therefor is void and creates no liability: Pacific Pav. Co. v. Geary, 136 Cal. 373, 374; 68 Pac. Rep. 1028; Pacific Pav. Co. v. Sullivan Estate Co., 137 Cal. 261, 262; 70 Pac. Rep. 86; City Street Imp. Co. v. Babcock, 139 Cal. 690; 73 Pac. Rep. 666.

Petition of remonstrance. A provision in a statute authorizing a petition of remonstrance against acts and proceedings of the City Council does not apply in cases of void contract, but does apply to acts and proceedings within the power of the Council: Capron v. Hitchcock, 98 Cal. 427, 431; 33 Pac. Rep. 431; and it seems that neither a void award of a street contract nor a void contract on such award would become valid by failure to file a petition of remonstrance under the statute: Capron v. Hitchcock, 98 Cal. 427, 431; 33 Pac. Rep. 431. A land-owner who fails to file a remonstrance waives all objections to the form and granting of the petition; and, in an action to recover the assessment, the decision of the Board in ordering the work to be done is conclusive as against a collateral attack: Spaulding v. North San Francisco etc. R. R. Co., 87 Cal. 40, 46; 24 Pac. Rep. 600; 25 Pac. Rep. 249. Parties who do not remonstrate are precluded from claiming the benefit of a remonstrance filed by others: Harney v. Heller, 47 Cal. 15. An owner cannot remain silent until he has secured the full benefit of street-work and then seek to avoid payment; if he denies the power of the Council to order the improvement, he must test the question by injunction before the work is done. Acquiescence in the action of the Council is, by law, made to estop him from going behind the making of the contract: Lent v. Tillson, 72 Cal. 404, 433; 14 Pac. Rep. 71.

Sec. 5. Improvement chargeable upon a district; objections in writing. Hearing of objections. Effect where objections are sustained. Diagram of each lot.

Sec. 5. When the contemplated work or improvement in the opinion of the Board of Public Works is of more than local or ordinary public benefit, it may recommend to the Supervisors that the expense of such work or improvement be made chargeable upon a district, and said Board shall in its resolution of intention set out the district benefited by said work or improvement and to be assessed to pay the expense thereof. Objections to the extent and boundaries of the district of lands to be benefited by said work or improvement may be made by any interested party, in writing, within ten days after the expiration of the time of publication of the resolution of intention.

The Secretary of the Board shall lay said objections before it and the Board shall, at its next meeting, fix a time for hearing said objections not less than one week thereafter. The Secretary shall thereupon notify the persons making such objections by depositing a notice thereof in the Post Office at the City and County, postage prepaid, addressed to each objector. At the time specified the Board shall hear the objections urged and pass upon the same, and if said objections are overruled, its decision shall be final and conclusive as to the extent and boundaries of the district.

If the objections are sustained, the Board shall proceed to set out another district to the extent and boundaries of which objections may be made and a hearing had thereon as above provided; and so on in like manner until a district has been set out to the extent and boundaries of which all objections shall be overruled by the Board—its decision in that behalf to be final and conclusive; and thereupon the proceedings shall continue the same as if no objections had been made. In its report to the Supervisors the Board shall accompany its report with a diagram on which shall be delineated each separate lot, piece or parcel of land, the area in square feet of each of such lots, pieces or parcels of land, and the relative location of the same to the work or improvement proposed to be done within the limits of the district. Such diagram shall be certified to be correct by the Secretary of the Board.

District assessment. There is no restriction in our Constitution upon the power of the legislature to impose assessments to defray the expense of public improvements, in the nature of grading and planking streets, upon the property supposed to be benefited thereby, in any district designated by the legislature, or upon the proper officers of municipal governments acting under the authority of law. The matter rests in the discretion of the legislature, and it is authorized to apportion the amount to be raised according to the benefits received, in proportion to frontage of the superficial contents, or to adopt any principle of apportionment: Emery v. San Francisco Gas Co., 28 Cal. 345, 370; Harney v. Benson, 113 Cal. 314; 45 Pac. Rep. 687. The legislature may delegate to municipal corporations authority to assess real property to pay the expenses of local improvements, and to apportion the assessment, in proportion to the frontage of the land assessed, on the improvements: Jennings v. Le Breton, 80 Cal. 8, 15; 21 Pac. Rep. 1127; People v. Lynch, 51 Cal. 15. Whatever standard is adopted for a street assessment must be levied with uniformity and equality: People v. Lynch, 51 Cal. 15. As to description of district to be assessed, see Dehail v. Morford, 95 Cal. 457; 30 Pac. Rep. 593; Thomason v. Cuneo, 119 Cal. 25; 50 Pac. Rep. 846. As to the sufficiency of objections of property holders, see Pacific Pav. Co. v. Gallett, 137 Cal. 174; 69 Pac. Rep. 985. As to the effect of designating a distinct street, or portion of a street, which is to be improved, and as to notice of a distinct improvement, see Bates v. Twist, 138 Cal. 52; 70 Pac. Rep. 1023.

Sec. 6. Completion of work; affidavit of contractor; private agreement nullifies contract.

Sec. 6. When the work under any contract shall have been completed, the contractor shall make and file in the office of the Board of Public Works an affidavit to the effect that he has not entered into any private agreement, verbal or written, with any person liable to be assessed for said work, or with any one on his behalf, to accept a price from him less than the price named in said contract, or to make any rebate or deduction to him from such price. Any such agreement shall be deemed a fraud upon all persons liable to be assessed for such work other than the property owners who were parties to the agreement, and shall make void, as to such persons so defrauded, any assessment made for the work done under such contract; and where there is more than one contractor each contractor shall make such affidavit.

Contractor's fraud upon owners. As to requisites of bid, see Charter, ante, art. VI, chap. I, secs. 16, 18. If a person, before he makes a contract with the Superintendent of Streets, makes a private contract with a part of the owners to do street-work, it is a fraud upon the other owners: Nolan v. Reese, 32 Cal. 484; Himmelmann v. Hoadley, 44 Cal. 213; Brady v. Bartlett, 56 Cal. 350. Under a statute which entitles the owner of property to have the work done upon fair bidding, unaffected by any act, device, or machination of the bidder to whom the contract may be awarded, or of any person in collusion with him, a fraudulent contract may be set up as a defense to the assessment: Brady v. Bartlett, 56 Cal. 350.

What does not invalidate contract. The election of a member of a firm as a member of the Board of Supervisors does not invalidate or otherwise affect contracts previously made with the City and County by the firm of which he was a member: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 610.

Sec. 7. Completion of contract; assessment to pay same. Proportion of assessment on railroads.

Sec. 7. When any work in or upon any public street shall have been completed according to contract, and the affidavit mentioned in the next preceding section shall have been made, the Board shall make an assessment to cover the sum due for the work performed and specified in said contract (including all incidental expenses), in conformity with the provisions of this Article, according to the nature and character of the work. The assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with any incidental expenses, the rate per front foot assessed, the amount of each assessment, the name of the owner of each lot (if known to the Board, and if not known, the word "unknown" shall be written opposite the number of the lot and the amount assessed thereon); the number of each lot assessed, and shall have attached thereto a diagram exhibiting the street or street crossing on which the work has been done, and showing the relative location of each distinct lot to the work done, numbered to correspond with the numbers in the assessment, and showing the number of front feet assessed for said work. A mistake in the name of the owner shall not invalidate any assessment.

When the expense of such work falls in part upon any person, company or corporation having railroad tracks upon the street where such work has been done, said assessment shall include an assessment against said person, company or corporation, for its legal proportion of said expense, and the same shall constitute a lien upon the road-bed, rolling stock, franchises and other property of such person, company or corporation, for a period of two years from the date of recording the warrant, assessment and diagram hereinafter provided for.

Assessment. Power to levy. There is nothing unconstitutional in levying a tax for street improvements: Burnett v. Sacramento, 12 Cal. 76; Emery v. San Francisco Gas Co., 28 Cal. 346; Walsh v. Mathews, 29 Cal. 123; Emery v. Bradford, 29 Cal. 75; Taylor v. Palmer, 31 Cal. 240. An assessment is in the nature of a judgment, and, in the absence of statutory authority for its revision, the judgment cannot be changed: Williams v. Bergin, 108 Cal. 166, 169; 41 Pac. Rep. 287. The legislature cannot legalize a void assessment, nor can it, by direct act, make an assessment within an incorporated city, but it may authorize the municipal authorities to do so: Schumacker v. Toberman, 56 Cal. 508, 511; Brady v. King, 53 Cal. 44, 45. The power to make assessments for street improvements cannot be delegated: Bolton v. Gilleran, 105 Cal. 244; 38 Pac. Rep. 881; Perine Cont. etc. Co. v. Pasadena, 116 Cal. 6; 47 Pac. Rep. 777; Stansbury v. White, 121 Cal. 433; 53 Pac. Rep. 940. One who owns land bordering upon an improved street is not liable for the cost of improvement beyond the value of his land: Taylor v. Palmer, 31 Cal. 241, 256; and the assessment can be enforced only by proceedings to subject the land to a sale in discharge of the lien: Creighton v. Manson, 27 Cal. 613.

"Assessment." Distinguished from "taxation." While the power of assessment comes from the general power of taxation, it must not be confounded with it, because the words "taxation" and "assessment," as used in the Constitution of this State, do not have the same signification: Taylor v. Palmer, 31 Cal. 240, 251. "Taxation" must be exercised according to the ad valorem principle, except when exercised through a municipal corporation for the purpose of improving the streets: Taylor v. Palmer, 31 Cal. 240, 255; Chambers v. Satterlee, 40 Cal. 497. In the latter case an assessment for street improvement is a municipal tax: Himmelmann v. Spanagel, 39 Cal. 389; Chambers v. Satterlee, 40 Cal. 497; Hancock v. Whittemore, 50 Cal. 522; Whiting v. Quackenbush, 54 Cal. 306.

Assessment. Duty to make. Time. Under this section, it is made the duty of the Board of Public Works to make the assessment. Formerly it was the duty of the Superintendent of Streets; but no time was designated within which the assessment had to be made: Himmelmann v. Cofran, 36 Cal. 411; Williams v. Bergin, 116 Cal. 56; 47 Pac. Rep. 877. An abortive attempt to make a valid street assessment would not exhaust the power of the Superintendent: Himmelmann v. Cofran, 36 Cal. 411; Dyer v. Scalmanini, 69 Cal. 637; 11 Pac. Rep. 327. If he failed to authenticate his record with his official signature, it was his duty to afterward make a valid assessment: Shepard v. McNeil, 38 Cal. 72; and this duty could be enforced by mandamus: Himmelmann v. Cofran, 36 Cal. 411; but if the assessment was valid he could not be required to make another: Frick v. Morford, 87 Cal. 576; 25 Pac. Rep. 764. Power to make a street assessment cannot be delegated: Bolton v. Gilleran, 105 Cal. 244; 38 Pac. Rep. 881.

Assessment. To known or "unknown owners." A street assessment must be made either to the real owner of the property or to the "unknown owner." If made to a person other than the real owner, it cannot be enforced against the owner. No other or different mode of assessment is permissible: Himmelmann v. Steiner, 38 Cal. 175; Himmelmann v. Hoadley, 44 Cal. 213; City of Stockton v. Dunham, 59 Cal. 608. That the word "unknown" is written opposite the number of the lot in the assessment is sufficient to show that the owner's name was unknown to the Superintendent of Streets: Hewes v. Reis, 40 Cal. 255, 261. An assessment to all "unknown owners" amounts to an official certificate by the proper officer that the owner of the particular lot designated was unknown to him, and the truth of the facts so certified cannot collaterally be called in question in an action brought upon the assessment: Chambers v. Satterlee, 40 Cal. 497. If property belongs to persons as tenants in common, it should be assessed to them jointly as owners: Blatner v. Davis, 32 Cal. 328, 331. An assessment on a lot made to a deceased person is void: Smith v. Davis, 30 Cal. 536.

Assessment. Benefit, equality, and uniformity. Property not benefited by a street improvement cannot be subjected to an assessment for such improvement: In Matter of Market Street, 49 Cal. 546; but see Whiting v. Townsend, 57 Cal. 515. The question of benefit, however, is one for the legislature, or such local authorities as have been charged with the duty of determining that question, and unless it manifestly appears that discretion has been abused, or that no benefit can be or could reasonably have been expected to result from the work, the courts will not interfere: Lent v. Tillson, 72 Cal. 404; 14 Pac. Rep. 71; Harney v. Benson, 113 Cal. 314; 45 Pac. Rep. 687. A street assessment must be levied with equality and uniformity: Whiting v. Quackenbush, 54 Cal. 306; People v. Lynch, 51 Cal. 15. It may be apportioned according to the number of feet which front on the improvement, without other reference to benefits: Jennings v. Le Breton, 80 Cal. 8; 21 Pac. Rep. 1127, and cases cited: but cannot exceed the value of the benefit conferred on the lot or its owner by the improvement: Creighton v. Manson, 27 Cal. 613.

Assessment. Description of property. As to assessments on street-railways, see post, sec. 24 of this chapter. An assessment for improving a street must contain a description of the property assessed: Himmelmann v. Cahn, 49 Cal. 285. As to what descriptions are sufficient, see Labs v. Cooper, 107 Cal. 656; 40 Pac. Rep. 1042, and cases cited; McDonald v. Conniff, 99 Cal. 386; 34 Pac. Rep. 71; Ede v. Knight, 93 Cal. 159; 28 Pac. Rep. 86; Diggins v. Hartshorne, 108 Cal. 154; 41 Pac. Rep. 283; Himmelmann v. Bateman, 50 Cal. 11; Dorland v. McGlynn, 47 Cal. 47. As to the formation and diagram of assessment districts, see Banaz v. Smith, 133 Cal. 102; 65 Pac. Rep. 309.

Sec. 8. Division of expense. First — City and County. (a) Accepted streets. (b) Front of city property. (c) Front of United States property. Second — Sewers, grading, paving, assessed to adjacent blocks or district. Third — Railroads must bear proportion. Limit of assessment.

Division of expense.

Sec. 8. The expense of all work or improvement done upon any part of said streets, lanes, alleys, places or courts, under the order of the Supervisors, shall be borne and paid for as follows:

City and County.

First—The City and County shall pay out of the General Fund the expense:

Accepted streets.

a. Of all work done on streets, crossings and intersections of streets that have been or may be accepted by the City and County, after the acceptance of the same, and all repairs and improvements deemed of urgent necessity that may be made upon the public streets and highways.

Front of city property.

b. Of all work done in front of, or that may be assessed to, property owned by the City and County or by any department thereof.

Front of United States property.

c. Of all work done in front of, or that may be assessed to, property owned by the United States.

Construction of section. This provision is not only a grant of power to the City and County, but is likewise a limitation as to expenditures for street-work. It is only after a street has been accepted that the city may pay for improvements thereon, except such repairs and improvements as are deemed of urgent necessity: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 410.

The language of this provision clearly expresses an intention that the City and County shall pay for urgent-necessity repairs and improvements upon all public streets and highways, whether accepted or not; but the urgent necessity fund is not available for the payment of the same: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 426, 427, 428.

The expense of resetting corner cesspools and curbings and doing other work upon unaccepted streets must be borne by the property owners, and not by the municipality: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 410.

Work on unaccepted street. Pay for. There seems to be no provision in the Charter under which the city may lawfully pay for street-work upon an unaccepted street, unless such work is a matter of urgent necessity. To so construe the Charter as to make it possible to pave, sewer, or otherwise improve an unaccepted street at the expense of the city, would be ruinous to the whole purpose and design of the street law, which is to make improvements upon unaccepted streets a burden upon the property directly benefited. A distinction between accepted and unaccepted streets would be obliterated were such construction given as would permit the city to use its funds for all streets alike: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 410, 411.

The city cannot expend its funds for the pavement of an unaccepted street; nor can the city expend more than ten thousand dollars per annum for the improvement of county roads, if there be any such roads within the limits of this municipality: See Stats. 1872, p. 901. Therefore, whatever Mission Street may be, whether county road or city street, there was no power in the Board of Supervisors to authorize the expenditure of fifteen thousand dollars for the paving of such street from Silver Avenue to Onondaga Avenue, and no power in the Board of Public Works to call for bids therefor: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 593.

Sewers, grading, paving, assessed to adjacent blocks or district.

Second—The expense of all sewers, cesspools, manholes, culverts and drains, and of all grading, planking, macadamizing, paving, piling and capping any street, or portion thereof, and of all curbs thereon, and of all work done on sidewalks, shall be assessed upon the lands within the block or blocks adjacent thereto as herein provided, except where by an assessment district it may be provided otherwise.

Body of street improvements. The great body of street improvements falls within this subdivision: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 410.

Railroads must bear proportion. Limit of assessment.

Third—The expense of all work on such portion of any street required by law to be kept in order by any person, company, or corporation, having railroad tracks thereon, shall be borne and paid for by such person, company or corporation, and shall be included in the assessment hereinbefore provided for.

No assessment shall be levied upon any property, which, together with all assessments for street improvements that may have been levied upon the same property during the year next preceding, will amount to a sum greater than fifty per centum of the value at which said property was assessed upon the last preceding Assessment Book of the City and County.

Assessment. Limit of. As to assessment upon street-railways, see post, sec. 24 of this chapter. For rule prior to the adoption of this provision of the Charter concerning one half of the assessed value of the land. see Kreling v. Muller, 86 Cal. 465; 25 Pac. Rep. 10; McBean v. San Bernardino, 96 Cal. 183; 31 Pac. Rep. 489; Warren v. Postel, 99 Cal. 294; 33 Pac. Rep. 930.

Sec. 9. Subd. One — How assessments for street-work shall be levied. Subd. Two — Assessment according to nature of work. Subd. Three — Work on main street crossings. Subd. Four — Main street terminating in another main street. Subd. Five — Alley crossing main street. Subd. Six — Alley crossings. Subd. Seven — Alley terminating in another street. Subd. Eight — Work to complete unimproved portion of street; sewering on one side of street. Subd. Nine — Owners may do grading in front of their lots; certificate of work; grading contract; credit to certain owners for work done; cutting and filling; other work than grading. Subd. Ten — Resolution of intention. Subd. Eleven — Estimate and assessment upon completion of contract.

How assessments for street-work shall be levied.

Sec. 9. Subdivision One—Except where the expense incurred for the street work and improvement authorized herein is to be assessed upon a district as hereinafter provided, such expense, other than that to be paid by a person, company or corporation having tracks on the street where such work and improvement has been done, shall be assessed upon the lots and lands fronting thereon, except as hereinafter specifically provided; each lot or portion of a lot being separately assessed in proportion to the frontage at a rate per front foot sufficient to cover the total expense of the work.

References. That the act regulating assessments for street improvement, known as the Vrooman Act, which provides for apportioning the expenses of a street improvement according to the frontage of the lots along the streets, is constitutional and valid, see Redondo Beach v. Cate, 136 Cal. 146; 68 Pac. Rep. 586; San Francisco Pav. Co. v. Bates, 134 Cal. 39; 66 Pac. Rep. 2; German Sav. and Loan Soc. v. Ramish, 138 Cal. 120; 69 Pac. Rep. 89; 70 Pac. Rep. 1067; Hadley v. Dague, 130 Cal. 207; 62 Pac. Rep. 500.

Assessment. "Front foot." Mode of. As to meaning of assessment "upon the lots and land fronting thereon," see Diggins v. Brown, 76 Cal. 318, 321; 18 Pac. Rep. 373. This mode of assessment is constitutional in this State. Contra: Norwood v. Baker, 172 U. S. 269; 43 L. ed. 443; 19 Sup. Ct. Rep. 187; affirming 74 Fed. Rep. 997. The basis of assessment is the frontage upon the work, and the frontage of each lot determines the amount of the assessment against that lot, irrespective of its shape, size, or depth: Diggins v. Hartshorne, 108 Cal. 154, 163; 41 Pac. Rep. 283. Where the improvement is confined to a portion of the street upon one side of its middle line, the assessment therefor must be only upon the lots which front the portions of the work ordered: McDonald v. Conniff, 99 Cal. 386, 388; 34 Pac. Rep. 71; Perine v. Erzgraber, 102 Cal. 234; 36 Pac. Rep. 585.

Assessment of each lot. One lot, or any number less than all, cannot be required to pay an assessment for a street improvement for all of the lots, where all are within one assessment district. If one lot is not assessed, and the whole expense is assessed upon the remaining lots, the whole assessment is void: People v. Lynch, 51 Cal. 15, 22; Dyer v. Harrison, 63 Cal. 447; Diggins v. Brown, 76 Cal. 318; 18 Pac. Rep. 373; Davies v. Los Angeles, 86 Cal. 37; 24 Pac. Rep. 771; but in Buckman v. Landers, 111 Cal. 347, 350; 43 Pac. Rep. 1125, it is held that the mere omission from the assessment of one of the lots fronting upon the street does not, of itself, render the assessment void upon its face; that the property owner had a right to have the omission corrected upon appeal to the Board of Supervisors; and that his failure to appeal deprived him of a right to object to such omission in an action to foreclose the assessment against him. To same effect is San Francisco Pav. Co. v. Dubois, 2 Cal. App. Rep. 42; 83 Pac. Rep. 72. If a lot is charged with a portion of the expense for work done, that the statute declares must be assessed upon other lots, the assessment is invalid: Ryan v. Altschul, 103 Cal. 174; 37 Pac. Rep. 339; but a street assessment is not rendered void by failure to assess property which belongs to the United States, to the State, or to the City and County, as such property is not subject to taxation for revenue purposes: People v. Austin, 47 Cal. 353, 360.

Assessment according to nature of work.

Subdivision Two—The expense of all improvement except such as is done by contractors under the provisions of section sixteen of this Chapter, until the streets, avenues, street crossings, lanes, alleys, places, or courts are finally accepted, as provided in section twenty-three of this Chapter, shall be assessed upon the lots and lands as provided in this section according to the nature and character of the work.

References. As to the paving of street crossings, see City Street Imp. Co. v. Laird, 138 Cal. 27; 70 Pac. Rep. 916.

Construction of section. This subdivision excepts the provision of section 16 from the effect of the provisions of section 9, and so distinctly recognizes in section 16 a mode of meeting the expenses of certain work or repairs different from that provided by section 9: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 426, 427.

Work on main street crossings.

Subdivision Three—The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot on the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, half way to the next main street crossing, and all the way on said blocks to a boundary line of the city where no such crossing intervenes, but only according to its frontage in said quarter blocks and irregular blocks.

Assessment. Street crossings. As to intersections and crossings, see Kelly v. Luning, 76 Cal. 309; 18 Pac. Rep. 335; Bassett v. Enwright, 19 Cal. 636; Parker v. Reay, 76 Cal. 103; 18 Pac. Rep. 124. As to the meaning of "quarter-block," see post, sec. 26 of this chapter. It is proper to assess a triangular-shaped lot, where the property corners on the work, and has an admitted frontage of a designated number of feet on the intersecting street: Martin v. Wagner, 120 Cal. 623, 625; 53 Pac. Rep. 167.

Main street terminating in another main street.

Subdivision Four—Where a main street terminates in another main street, the expense of the work done on one-half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on the same, according to the frontage of such lots on said main street, and the expense of the other half of the width of said street upon the lot or lots fronting on the latter half of the street at such termination.

Work at intersections. Where work is done at the intersection of two streets, only one half of the expenses of the work on the intersection can be charged upon the two quarter-blocks cornering thereon, and if the whole expense of the work done on the intersection is assessed upon such two quarter-blocks, the assessment is void on its face: Kenny v. Kelly, 113 Cal. 364, 365; 45 Pac. Rep. 699.

Work at termination. That directions of Street Improvement Act, Stats. 1891, p. 204, concerning assessments for work done upon the "crossings," do not apply to streets terminating in the street improved, see San Francisco Pav. Co. v. Dubois, 2 Cal. App. Rep. 42, 44; 83 Pac. Rep. 72.

Alley crossing main street.

Subdivision Five—Where any alley or subdivision street crosses a main street, the expense of all work done on said crossing shall be assessed on all lots or portions of lots half way on said alley or subdivision street to the next crossing or intersection, or to the end of such alley or subdivision street if it does not meet another.

Alley crossings.

Subdivision Six—The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions, half way to the next street, place. or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another.

Alley terminating in another street.

Subdivision Seven—Where a subdivision street, avenue, lane, alley, place, or court, terminates in another street. avenue, lane, alley, place, or court, the expense of the work done on one-half the width of the subdivision street, avenue, alley, place, or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street or avenue, lane, alley, place, or court so terminating, according to its frontage thereon, half-way on each side, respectively, to the next street, avenue, lane, alley, court, or place, or the end of such street, avenue, lane, alley, place, or court, if it does not meet another, and the other one-half of the width upon the lots fronting such termination.

Triangular-shaped lot. Assessment of. It is proper to assess a triangular-shaped lot, where the property corners on the work, and has an admitted frontage of a designated number of feet on the intersecting street: Martin v. Wagner, 120 Cal. 623, 625; 53 Pac. Rep. 167.

Work to complete unimproved portion of street; sewering on one side of street.

Subdivision Eight—Where any work mentioned in this Chapter, manholes, cesspools, culverts, crosswalks, piling and capping excepted, is done on either or both sides of the center line of any street for one block or less, and further work opposite to the work of the same class already done is ordered to be done to complete the unimproved portion of said street, the assessment to cover the total expense of said work so ordered shall be made upon the lots or portions of the lots only fronting the portions of the work so ordered. When sewering or resewering is ordered to be done under the sidewalk or only on one side of a street for any length thereof, the assessment for its expense shall be made only upon the lots and lands fronting nearest upon that side, and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side.

Owners may do grading in front of their lots; certificate of work; grading contract; credit to certain owners for work done; cutting and filling; other work than grading.

Subdivision Nine—Any owner or owners of lots or lands fronting upon any street, the width and grade of which have been established by the Supervisors, may perform at his or their own expense (after obtaining permission from the Board of Public Works so to do, but before said Board has passed its resolution of intention to recommend grading inclusive of this) any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon may procure, at his or their own expense, a certificate from the City Engineer setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each owner, and that the same is done to the established width and grade of said street, or to the center line thereof, and thereafter may file said certificate in the office of the Board. Said certificate shall be recorded in a properly indexed book kept for that purpose in the office of the Board. Whenever thereafter the Supervisors order the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contract must express the price by the cubic yard for cutting and filling in grading, and such owner or owners, and his or their successors in interest, shall be entitled to credit on the assessment upon his or their lots and lands fronting on said street for grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their said certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been legally changed, only for so much of said certified work as would be required for grading to the grade as changed.

Such owner or owners shall not be entitled to any credit that may be in excess of the assessments for grading upon the lots and land owned by him or them, and proportionately assessed for the whole of said grading. The Board shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the changed grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned respectively by said certified owners and their successors in interest; but he shall not include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest. When any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work, except grading, on such street, in front of any block, at his or their own expense, and the Supervisors shall subsequently order any work to be done of the same class in front of the same block, the work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done, as provided in subdivision ten of this section; but the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the Board of Public Works at the time said order is passed.

Comments. Adaptation of Vrooman Act. The only language in the Vrooman Act, **Henning's General Laws**, p. 1311, which in any way touches upon this matter of street-work by private contract is found also in the Charter. Art. VI, chap. II, sec. 9, subd. 9, expressly gives to owners the right to grade in front of their lots at their own expense, after obtaining permission of the Board of Public Works so to do. And, later in the same subdivision, provision is made that when any owner shall have heretofore done, or shall hereafter do, any work, except grading, at his own expense, the Supervisors shall except such property from assessment, in case other work of the same class is ordered by the Supervisors in front of such block;

but, says the Charter, "the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the Board of Public Works at the time said order is passed." The whole of subdivision 9 is but the Vrooman Act adapted to new conditions. And therein is recognized the right of the owner, with the permission of the city authorities, to do street-work at his own expense: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 178, 179.

Same. Conflicting provisions. This subdivision was evidently not in the original draft of the section, as it does not open with the words used in all the other subdivisions of the section, and while all the preceding provisions are made dependent upon ordinances of the Supervisors, subdivision 9, the last of the group, would appear to be an independent and self-sufficient provision. This provision introduces a new plan of procedure, and one manifestly in conflict with the provision of subdivision 1 of the same section, and likewise of numerous other provisions of the Charter. To reconcile this conflict, resort must be had to such construction as will permit both provisions to be effective, if such construction is possible. The only construction which will allow this is one that distinguishes between — 1. Permission to use the public streets, either overhead, on the surface, or underneath, for some desired purpose; 2. Permission to have the roadway torn up, in order to do some work beneath it. In general, this subdivision should be enforced wherever it does not conflict with some express provision of the Charter, or State Constitution, or the general law, where the latter is applicable, under which provision the right to open a street is conferred upon a person for a specific purpose, or the duty is specifically imposed upon a person to restore the same: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 222, 224, 226.

Resolution of intention.

Subdivision Ten—The Board of Public Works may include in the resolution of intention any of the different kinds of work mentioned in this Chapter, and it may except therefrom any of said work already done upon the street to the official grade. The lots and portions of lots fronting upon said accepted work already done shall not be included in the frontage assessment for the class of work from which the exception is made; but this shall not be construed so as to affect the special provisions as to grading contained in subdivision nine of this section.

References. As to resolution of intention to lay granite curbs, and that a resolution of intention to pave a street includes gutterways as part of the street, see City Street Imp. Co. v. Taylor, 138 Cal. 364; 71 Pac. Rep. 446.

Estimate and assessment upon completion of contract.

Subdivision Eleven—When the resolution of intention declares that the expense of the work and improvement is to be assessed upon a district, immediately after the contractor has fulfilled his contract to the satisfaction of the Board of Public Works, or to the satisfaction of the Supervisors on appeal, the Board of Public Works shall proceed to estimate upon the lands, lots, or portions of lots within said assessment district, as shown by the diagram provided for in section five of this Chapter, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the expense of such proposed work, and in so doing shall assess said total sum upon the several pieces, parcels, lots, or portions of lots, and subdivisions of land in said district benefited thereby, to wit: Upon each respectively in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivisions of land. In other respects the assessment shall be as provided in this Chapter.

References. As to sufficiency of Engineer's certificate after work is completed, see San Francisco Pav. Co. v. Dubois, 2 Cal. App. Rep. 42, 46; 83 Pac. Rep. 72.

Assessment of benefits. A law which directs the Superintendent of Streets to assess benefits, without prescribing the precise mode of assessment, is not unconstitutional: Greenwood v. Morrison, 128 Cal. 350; 60 Pac. Rep. 971.

Sec. 10. Board may establish method of assessment.

Sec. 10. If at any time there shall be any street work or improvement done, and none of the methods hereinbefore provided are legally sufficient to authorize the Board of Public Works to make an assessment to pay for the expense thereof, then said Board shall, before it passes a resolution of its intention to recommend the ordering of said work or improvement, establish by resolution a method by means of which such assessment shall be made; and on the completion of the work or improvement to the satisfaction of said Board, or to the satisfaction of the Supervisors on appeal, said Board shall make an assessment to pay the expense thereof according to the method established by said resolution.

References. As to what may be included in the same resolution of intention, see Bates v. Twist, 138 Cal. 52; 70 Pac. Rep. 1023.

Void assessment cannot be validated. Where a void assessment is made, a subsequent ordinance or statute attempting to validate it is unconstitutional: Kelly v. Luning, 76 Cal. 309; 18 Pac. Rep. 335; Schumacker v. Toberman, 56 Cal. 508; Brady v. King, 53 Cal. 44.

Sec. 11. Assessments authenticated.

Sec. 11. In making all assessments the Board of Public Works shall act as a Board, and the assessment shall be authenticated by the signatures of all the members thereof.

Assessment. How authenticated. See Gillis v. Cleveland, 87 Cal. 214; 25 Pac. Rep. 351; Himmelmann v. Hoadley, 44 Cal. 213; Dougherty v. Hitchcock, 85 Cal. 512; 25 Pac. Rep. 351; Himmelmann v. Danos, 35 Cal. 441.

Defects in preliminary bond. Effect of. Defects in a preliminary bond cannot affect the validity of an assessment, where the work has been performed under the contract to the satisfaction of the authorities: Greenwood v. Morrison, 128 Cal. 350; 60 Pac. Rep. 971.

Sec. 12. Warrant attached to assessment. Form of warrant for street-work. Must be recorded; lien for two years. Contractor may collect assessments. Defective assessments or warrants; new assessment; lien; appeal.

Sec. 12. To said assessment shall be attached a warrant which shall be signed by the President of the Board of Public Works and countersigned by the Secretary thereof. Said warrant shall be substantially in the following form:

By virtue hereof the Board of Public Works of the City and County of San Francisco, by the authority vested in it, does authorize and empower (name of contractor) his (or their) agents, or assigns, to demand and receive the several assessments upon the assessment and diagram hereto attached, and this shall be his (or their) warrant for the same.

(Date) ——. (Name of President of Board of Public Works.)

Countersigned by (Name of Secretary of Board of Public Works).

Said warrant, assessment and diagram shall be recorded in the office of the Board. When so recorded the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively for the period of two years from the date of said recording, unless sooner discharged; and from and after the date of said recording of any warrant, assessment and diagram, all persons interested in said assessment shall be deemed to have notice of the contents of the record thereof.

After said warrant, assessment and diagram are recorded, the same shall be delivered to the contractor, or his agent or assigns, on demand, but not until after the payment to the Board of the incidental expenses not previously paid by the contractor or his assigns. By virtue of said warrant said contractor, or his agents or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments.

When it shall appear by the final judgment of any court in this State having jurisdiction to render such judgment, that any suit brought to foreclose the lien of any assessment for street work made under this Chapter, or in the recording thereof, has been defeated by reason of any defect, error, informality, omission, irregularity, or illegality, thereof or therein, or in the return on the warrant issued pursuant to any such assessment, or in the recording of any such warrant, any person interested therein may, at any time within seven months after the entry of said final judgment, apply to the Board for another assessment to be issued in conformity to law; and the Board shall, within sixty days after the time of said application, make and deliver to said applicant a new assessment, diagram and warrant in accordance with law, and sign, record and authenticate the same as above provided. Such assessment shall be a lien upon the lots of land set out therein for the period of two years from the date of its recording, and suit may be brought to enforce said lien as provided in this Chapter. Should such final judgment be that of the Superior Court for the City and County and an appeal therefrom to the Supreme Court of the State has been taken, no such other assessment shall be made until said appeal has been determined.

Warrant. Form, service, issuance. A warrant, to be valid, must be in the form prescribed by the Charter: Lucas v. San Francisco, 7 Cal. 463; Argenti v. San Francisco. 16 Cal. 255; Martin v. San Francisco, 16 Cal. 285. It must be dated, and the date includes the month and day of the month, as well as the year: Shipman v. Forbes, 97 Cal. 572; 32 Pac. Rep. 599. As to service of a warrant and return of service, see Guerin v. Reese, 33 Cal. 292. Where the contract has been assigned, and the assignee performs it, the warrant, when issued for the work, may be issued to the contractor, who may make demand for its payment: Taylor v. Palmer, 31 Cal. 240. As to the effect of a street contractor's failure to return his warrant within the time prescribed by law, see City Street Imp. Co. v. Emmons, 138 Cal. 297; 71 Pac. Rep. 332.

Warrant. Countersigning. The act of countersigning the warrant is purely ministerial: Beaudry v. Valdez, 32 Cal. 269. If the warrant was not dated when signed, the fact that the one who countersigned it wrote a date thereon will not give the warrant itself that date: Shipman v. Forbes, 97 Cal. 572; 32 Pac. Rep. 599. Any irregularity of the Mayor in countersigning a warrant is waived by failure to appeal from his act to the Common Council: Beaudry v. Valdez, 32 Cal. 269. An omission of the Mayor's name and official designation from a warrant is not a fatal defect: Gillis v. Cleveland, 87 Cal. 214; 25 Pac. Rep. 351.

Warrant, assessment, and diagram. Recording of. To constitute a lien, the warrant, assessment, and diagram must be recorded before they are delivered to the contractor: Gillis v. Cleveland, 87 Cal. 214; 25 Pac. Rep. 351, and cases cited. The record is ineffectual if any material part of the assessment is omitted therefrom: Labs v. Cooper, 107 Cal. 656; 40 Pac. Rep. 1042; Himmelmann v. Bateman, 50 Cal. 11. As an additional and necessary prerequisite to the creation of a lien, the Engineer's certificate must be recorded as well as the warrant, assessment, and diagram: Rauer v. Lowe, 107 Cal. 229, 234; 40 Pac. Rep. 337; but such certificate need not be attached to the assessment: Gray v. Lucas, 115 Cal. 430; 47 Pac. Rep. 354. It must be presumed that the contract and all papers required by law to be recorded, are recorded: Reid v. Clay, 134 Cal. 207; 66 Pac. Rep. 262. It is unnecessary to determine what, in the absence of direct proof, the presumption as to record would be, where it appears that the return and other documents are recorded: Blanchard v. Ladd, 135 Cal. 212; 67 Pac. Rep. 130. Amount of assessment becomes a lien upon lot, when papers enumerated in the statute containing material matters required are recorded: Moffitt v. Jordan, 127 Cal. 622, 625; 60 Pac. Rep. 173.

Warrant, assessment, and diagram. Authentication of record. The proper mode of authenticating the record of the assessment, diagram, and warrant is to append thereto the official certificate of the officer whose duty it is to make the record: Himmelmann v. Hoadley, 44 Cal. 213, 225; and such certificate may be signed by a deputy of the Superintendent of Streets, in the name of his principal: Himmelmann v. Hoadley, 44 Cal. 213. 225; but without such certificate the record is valueless: Himmelmann v. Danos, 35 Cal. 441. As to the sufficiency of authentication of record to impose a valid lien of assessment, see Greenwood v. Chandon, 130 Cal. 467; 62 Pac. Rep. 736. Record of documents required to impose a street-assessment lien must be authenticated by a certificate of the Superintendent of Streets: Greenwood v. Chandon, 130 Cal. 467; 62 Pac. Rep. 736. As to insufficiency of the City Engineer's certificate to authenticate the record required to impose a street-assessment lien, see Obermeyer v. Patterson, 130 Cal. 531; 62 Pac. Rep. 926.

Assessment. Lien of. See Ryan v. Altschul, 103 Cal. 174; 37 Pac. Rep. 339. To create a lien, it is necessary to substantially comply with every requirement of the statute: Rauer v. Fay, 110 Cal. 361; 42 Pac. Rep. 902; Schwiesau v. Mahon, 110 Cal. 543; 42 Pac. Rep. 1065. No action can be maintained to enforce a lien not existing at the time such action is commenced: Reis v. Graff, 51 Cal. 86, 90. Each lot, or portion of a lot, is separately liable for its proportion of the cost of the improvement; and the liability of each is independent of any other, and constitutes a separate demand, upon which a separate cause of action may be based: Gillis v. Cleveland, 87 Cal. 214, 218; 25 Pac. Rep. 351. A lien is not lost by the mere lapse of two years from the recording of the assessment, if the action was commenced within that time: Randolph v. Bayue, 44 Cal. 366, 371; Dougherty v. Henarie, 47 Cal. 9, 12; Himmelman v. Carpentier, 47 Cal. 42. Prior liens are not extinguished by the foreclosure of a junior lien, where the holders of the prior liens are not made parties to the action: Wood v. Brady, 68 Cal. 78; 5 Pac. Rep. 623; 8 Pac. Rep. 599. The cost of making street imrovements is as much a charge against a homestead as against any other property fronting on such improvement: Perine v. Forbush, 97 Cal. 305, 311; 32 Pac. Rep. 226. A street assessment is not invalidated by an omission of the name and official designation of the Mayor from the warrant: Gillis v. Cleveland, 87 Cal. 214, 220; 25 Pac. Rep. 351. Where a contract is regularly let to improve a street, and there is a lot fronting on the same at that time as one lot, the owner cannot, by selling a part of it before the assessment is made, prevent the contractor from having a lien on the whole lot to pay the cost of such improvement: Dougherty v. Miller, 36 Cal. 83. A lien for taxes is extinguished by a tax deed: Dougherty v. Henarie, 47 Cal. 9. Omission from assessment of one or more lots fronting on street to be improved does not, of itself, render the assessment void upon its face: San Francisco Pav. Co. v. Dubois, 2 Cal. App. Rep. 42, 45; 83 Pac. Rep. 72. Defects in a preliminary bond cannot affect the validity of an assessment, where the work has been performed under the contract to the satisfaction of the authorities: Greenwood v. Morrison, 128 Cal. 350; 60 Pac. Rep. 971; and payment of a portion of an assessment does not release any part of lot assessed from lien for amount remaining unpaid: Williams v. Bergin, 127 Cal. 578, 581; 60 Pac. Rep. 164. As to whether signature of acting Mayor to a warrant for a street assessment affects the validity of the assessment, see City Street Imp. Co. v. Rontet, 140 Cal. 55; 73 Pac. Rep. 729. See ante, art. VI, chap. II, sec. 3, note.

Assessment. Prohibition as to further. As to time within which a second assessment may be made, where the first has been adjudged void, for causes affecting the assessment itself, see Wood v. Strother, 76 Cal. 545; 18 Pac. Rep. 766. The right to a second assessment does not exist, unless it appears by the final judgment in a suit upon the prior assessment that the suit was defeated by reason of some infirmity in assessment, or in the recording thereof, or in some matter connected with the return of the warrant: Gray v. Lucas, 115 Cal. 430, 433; 47 Pac. Rep. 354. The fact that some of the property owners have paid their proportion before the invalidity of an assessment is discovered is no reason why a valid assessment should not be made, where the prior proceedings are insufficient to support it; but such payments will be regarded as payments in advance, and the contractor will not be allowed to collect the sums over again: Wood v. Strother, 76 Cal. 545, 547; 18 Pac. Rep. 766. Property owners are estopped from denying the authority of the Superintendent of Streets to make a second assessment, where the first one was erroneously held to be void, though in fact valid: Dyer v. Scalmanini, 69 Cal. 637; 11 Pac. Rep. 327. Power of the Superintendent of Streets to make a valid assessment is not exhausted by an abortive attempt to make such assessment: Himmelmann v. Cofran, 36 Cal. 411.

Sec. 13. Contractor must demand payment of lawful assessments. Warrant to be returned. Payment may be made before suit. Release of assessment upon payment; failure to return warrant; unpaid assessments draw interest.

Sec. 13. The contractor or his assigns, or some person on his of their behalf, shall call upon the persons assessed, or their agents, if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made, the contractor, his assigns, or some person on his of their behalf, shall receipt the same upon the assessment in the presence of the person making such payment, and shall also give a receipt if demanded. When the persons so assessed, or their agents, cannot conveniently be found or when the owner of the lot is stated as "unknown" upon the assessment, then said contractor or his assigns, or some person on his or their behalf, shall publicly demand payment on the premises assessed.

The warrant shall be returned to the Board of Public Works within thirty days after its date with a return indorsed thereon, signed by the contractor or his assigns, or some person on his or their behalf, verified upon oath, stating the nature and character of the demand, and whether any of the assessments remain unpaid in whole or in part, and the amount thereof. Thereupon the Secretary of the Board shall record the return so made in the margin of the record of the warrant and assessment.

The Board can at any time receive the amount due upon any assessment and warrant issued by it and give a good and sufficient discharge therefor; but no such payment so made after suit has been commenced shall operate, without the consent of the plaintiff in the action, as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff.

The Board may release any assessment upon the books of its office on the payment to it of the amount of the assessment with interest against any lot or on the production to it of the receipt of the party or his assigns to whom the assessment and warrant were issued. If any contractor shall fail to return his warrant within the time and in the form provided in this section he shall thenceforth have no lien upon the property assessed; but if any warrant is lost, upon proof of such loss a duplicate may be issued, upon which a return may be made with the same effect as if the original had been so returned. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of seven per centum per annum until paid.

Demand for payment. Such demand must be for the amount due: Dyer v. Chase, 52 Cal. 440; Donnelly v. Howard, 60 Cal. 291; Dorland v. Bergson, 78 Cal. 637; 21 Pac. Rep. 537. A demand for the aggregate assessment on two lots is insufficient. The demand must be made on each lot for the amount assessed thereon: Shirmer v. Hoyt, 54 Cal. 280, 281. If the contractor, at the time he made the demand, stood upon any part of the premises lying within the exterior boundaries of the lot designated in the diagram, the demand is good: Ede v. Knight, 93 Cal. 159, 165; 28 Pac. Rep. 860. The demand may be made by an agent of the assignee of the contractor: Himmelmann v. Woolrich, 45 Cal. 249, 252. A personal demand is not necessary where the property has been assessed to "unknown owners": Whiting v. Townsend, 57 Cal. 515.

Public demand for payment. As to tone of voice in which demand must be made, see Himmelman v. Booth, 53 Cal. 50, 52. The contractor is not authorized to make service by public demand, until he has made a reasonable effort to find and serve the person assessed, or to find and serve the latter's agent: Guerin v. Reese, 33 Cal. 292, 297. Where the lot has been assessed to an "unknown owner," the contractor must make a public demand on the premises assessed; a demand made to the owner personally, or on the street in front of the premises, is insufficient: Alameda Macadamizing Co. v. Williams, 70 Cal. 534, 543; 12 Pac. Rep. 530; McBean v. Martin, 96 Cal. 188; 31 Pac. Rep. 5.

Return of warrant. The return must be made within the time prescribed after its date, but there is no provision as to when the affidavit of demand shall be recorded: Himmelmann v. Reay, 38

Cal. 163. The return must show a demand upon the person assessed, or a satisfactory reason why it was not done, before resorting to other modes of making the demand: Guerin v. Reese, 33 Cal. 292, 298. The return is prima facie evidence that demand has been made: Dyer v. Brogan, 57 Cal. 234: Ede v. Knight, 93 Cal. 159; 28 Pac. Rep. 860; Buckman v. Landers. 111 Cal. 347; 43 Pac. Rep. 1125; Deady v. Townsend, 57 Cal. 298: Himmelmann v. Hoadley, 44 Cal. 213. The affidavit is also prima facie evidence that affiant was the contractor's agent: Whiting v. Townsend, 57 Cal. 515; Foley v. Bullard, 99 Cal. 516; 33 Pac. Rep. 1081.

Sec. 14. Appeal to Supervisors from decision of Board; hearing; Supervisors may remedy errors. Supervisors' decision final.

Sec. 14. The owners, whether named in the assessment or not, the contractor or his assigns, and all other persons directly interested in any work provided for in this Chapter, or in the assessment, feeling aggrieved by any act or determination of the Board of Public Works in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination, or proceedings of the Board, shall, within thirty days after the date of the warrant, appeal to the Supervisors, by briefly stating their objections in writing and filing the same with the Clerk of the Supervisors. Notice of the time and place of the hearing, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations or proceedings objected to or complained of, shall be published for five days. Upon such appeal the Supervisors may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the Board relative to said work, may confirm, amend, set aside, alter, modify or correct the assessment in such manner as to them shall seem just; and require the work to be completed according to the directions of the Supervisors, and may at their option direct the Board of Public Works to correct the warrant, assessment or diagram in any particular, or to make and issue a new warrant, assessment and diagram to conform to the decisions of the Supervisors in relation thereto.

All the decisions and determinations of the Supervisors, upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities and irregularities, which the Supervisors might have remedied and avoided; and no assessment shall be held invalid, except upon appeal to the Supervisors, as provided in this section, for any error, informality or other defect in the proceedings prior to the assessment, or in the assessment itself, where the Board of Public Works has acquired jurisdiction to make the same.

Appeal to Supervisors. In general. If a property owner is dissatisfied with a street assessment, his remedy is to appeal to the Board of Supervisors, and his failure to appeal estops him from complaining of any matters which were the subject of appeal: McVerry v. Boyd, 89 Cal. 304; 26 Pac. Rep. 885; Fanning v. Leviston, 93 Cal. 186; 28 Pac. Rep. 943; Warren v. Riddell, 106 Cal. 352; 39 Pac. Rep. 781; Harney v. Benson, 113 Cal. 314; 45 Pac. Rep. 687; Girvin v. Simon, 116 Cal. 604; 48 Pac. Rep. 720; Beaudry v. Valdez, 32 Cal. 269; Himmelmann v. Hoadley, 44 Cal. 276. Written objections may constitute an appeal, although the protestants do not say in their protest that they appeal from the assessment: Belser v. Hoffschneider, 104 Cal. 455; 38 Pac. Rep. 312. If a lot is not liable to be assessed, the owner is not a party directly interested in the contract, and is not bound to appeal from the assessment: Bassett v. Enwright, 19 Cal. 635, 640. An excessive assessment may be corrected on appeal: Dowling v. Conniff, 103 Cal. 75; 36 Pac. Rep. 1034; Wells v. Wood, 114 Cal. 255; 46 Pac. Rep. 96; but a double assessment is illegal and void, and the lot-owner may resist payment of the assessment, without appealing to the City Council: Kenny v. Kelly, 113 Cal. 364; 45 Pac. Rep. 699. The absence of a valid bid is jurisdictional, and cannot be corrected on appeal: Williams v. Bergin, 129 Cal. 461, 464, 465; 62 Pac. Rep. 59. The Board has no power to dismiss an appeal taken regularly and in proper time; and if an appeal is erroneously dismissed, the assessment does not become a finality: People v. O'Neil, 51 Cal. 91. The effect of an appeal is to suspend all action for the collection of an assessment until after its determination: Williams v. Bergin, 108 Cal. 166, 172; 41 Pac. Rep. 287. Right of appeal is given only to parties aggrieved by the acts of the Superintendent of Streets, and has no application to the precedent acts of the Council or Board: De Haven v. Berendes, 135 Cal. 178, 181; 67 Pac. Rep. 786.

Failure to appeal. Effect of. A failure to appeal does not make a void contract valid: Brock v. Luning, 89 Cal. 316; 26 Pac. Rep. 972; Manning v. Den, 90 Cal. 610; 27 Pac. Rep. 435; McBean v. Redick, 96 Cal. 191; 31 Pac. Rep. 7; Schwiesau v. Mahon, 110 Cal. 543; 42 Pac. Rep. 1065. It does not waive defects which could not have been remedied by appeal: Manning v. Den, 90 Cal. 610; 27 Pac. Rep. 435; Warren v. Chandos, 115 Cal. 382; 47 Pac. Rep. 132; Partridge v. Lucas, 99 Cal. 519; 33 Pac. Rep. 1082; Frick v. Morford, 87

Cal. 576; 25 Pac. Rep. 764. A failure to appeal does not validate an assessment which is absolutely void for want of jurisdiction of the Board to make it: Perine v. Forbush, 97 Cal. 305; 32 Pac. Rep. 226; Capron v. Hitchcock, 98 Cal. 427; 33 Pac. Rep. 431; Ryan v. Altschul, 103 Cal. 174; 37 Pac. Rep. 339; San Jose Imp. Co. v. Auzerais, 106 Cal. 498; 39 Pac. Rep. 859; Kenny v. Kelly, 113 Cal. 364; 45 Pac. Rep. 699.

Appeal to Supervisors. Notice of. As to form and notice of such appeal, see Williams v. Viselich, 121 Cal. 314; 53 Pac. Rep. 807. The notice of appeal must be given in conformity with the statute. Notice, when required by statute, is not the equivalent of knowledge, and the Supervisors gain jurisdiction to act upon the appeal only by giving the notice that the statute requires, and in the manner that is required, and not by the fact that the parties interested may have knowledge of the intended action: Williams v. Bergin, 108 Cal. 166, 171; 41 Pac. Rep. 287.

Sec. 15. When contractor may sue for unpaid assessments. Attorney's fees for recovery of assessment. Warrant is prima facie evidence of regularity. Lien and execution.

Sec. 15. At any time after the period of thirty-five days from the day of the date of the warrant, or if an appeal has been taken to the Supervisors, then, at any time after five days from the decision of the Supervisors on such appeal, or after the return on the warrant, after the same may have been corrected, altered or modified, as herein provided, but not less than within thirty-five days from the date of the warrant, the contractor or his assignee may sue in his own name the owner or the mortgagee of the land, lots, or portions of lots assessed on the day of the date of the recording of the warrant, assessment and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of seven per centum per annum until paid.

In all cases of recovery under the provisions of this Chapter the plaintiff shall recover the sum of fifteen dollars in addition to the taxable costs, as attorney's fees, but not any percentage upon said recovery. When suit has been brought, after a personal demand has been made and a refusal to pay such assessment so demanded, the plaintiff shall also be entitled to have and recover said sum of fifteen dollars as attorney's fees in addition to all taxable costs, notwithstanding that the suit may be settled or a tender be made before a recovery in said action, and he may have judgment therefor.

Said warrant, assessment and diagram, with the affidavit of demand and non-payment, shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the Board of Public Works and of the Supervisors upon which said warrant, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action. The Court in which said suit shall be commenced shall have power to adjudge and decree a lien against the lots of land assessed, and to order such premises to be sold on execution as in other cases of the sale of real estate by the process of said Courts. In all actions brought to enforce the lien of assessments made pursuant to the provisions of this Chapter the proceedings therein shall be governed and regulated by the provisions of this Chapter, and, when not in conflict herewith, by the Codes of this State.

References. As to foreclosure of lien of street assessment against decedent's estate, see Flinn v. Gouley, 139 Cal. 623; 73 Pac. Rep. 542. That § 409 of **Kerr's Cyc. Code Civ. Proc.**, as to filing of notice of lis pendens, applies to enaction of street assessment, see Page v. W. W. Chase Co., 145 Cal. 578; 79 Pac. Rep, 278. As to when it is error to grant nonsuit in an action to foreclose the lien of a street assessment, see Raisch v. Hildebrandt, 146 Cal. 721; 81 Pac. Rep. 21. That street laws should be liberally construed in favor of property owners, see City Street Imp. Co. v. Babcock, 139 Cal. 690; 73 Pac. Rep. 666.

Complaint in action on assessment. In general. Such complaint must show that the time of commencement and of completion of the work was fixed by the contract, and that the various provisions of the statute have been complied with: Perine v. Forbush, 97 Cal. 305; 32 Pac. Rep. 226. The plaintiff must describe the land with sufficient definiteness to enable the purchaser under a decree for its sale to obtain possession thereof: Diggins v. Hartshorne, 108 Cal. 154; 41 Pac. Rep. 283. A proceeding to enforce a lien for a street assessment is equitable in its nature, and must now be brought in the Superior Court: Mahlstadt v. Blanc, 34 Cal. 577, 580. An assessment made after the death of the owner is not a claim which is required to be presented to his personal representatives for allowance: Hancock v. Whittemore, 50 Cal. 522.

Complaint in action on assessment. Necessary allegations. Such complaint must allege, that the notice of award of contract was published by order of the Board: Himmelmann v. Townsend, 49 Cal. 150; that the contract for the work done fixed the time for the commencement and completion of the work to be done thereunder: Washburn v. Lyons, 97 Cal. 314; 32 Pac. Rep. 310; that the defendants are the owners of or have some interest in the premises sought to be charged with the alleged lien: San Francisco v. Doe, 48 Cal. 560, 561; Santa Barbara v. Huse, 51 Cal. 217; that the assessment was made and issued: San Francisco v. Eaton, 46 Cal. 100; and that the assessment was made "upon the lots and lands fronting" upon the improvement: Miller v. Mayo, 88 Cal. 568, 570; 26 Pac. Rep. 364.

Complaint in action on assessment. Unnecessary allegations. As to how facts are to be stated, see Dyer v. North, 44 Cal. 157; Himmelmann v. Woolrich, 45 Cal. 249; Pacific Pav. Co. v. Bolton, 97 Cal. 8; 31 Pac. Rep. 625; Girvin v. Simon, 116 Cal. 604; 48 Pac. Rep. 720. Such complaint need not aver, that the Supervisors ordered their Clerk to sign the resolution of intention: Himmelmann v. Woolrich, 45 Cal. 249; or that notice of the intention of the Board was given in the resolution: Himmelmann v. Woolrich, 45 Cal. 249; or that any special demand was made upon defendant, other than that required by the statute: Conlin v. Seamen, 22 Cal. 546.

Answer to complaint. As to what constitutes an evasive answer, see Shepard v. McNeil, 38 Cal. 72. An allegation that the Board had no authority or jurisdiction over the work to be done raises simply an issue of law. The facts should be alleged: Spaulding v. Wesson, 84 Cal. 141; 24 Pac. Rep. 377. The defense that the work contracted for has not been done, or that the specifications for the work have been manifestly disregarded, must be alleged in the answer: Santa Cruz Rock Pav. Co. v. Bowie, 104 Cal. 286; 37 Pac. Rep. 934. The defendant must set up the nature and extent of his interest in the property: Himmelman v. Spanagel, 39 Cal. 389, 392.

Parties plaintiff. That the contract to perform work on streets is assignable, see note to sec. 21, chap. I, of this article. Action for a street assessment should be brought in the name of the street contractor, or in the name of his assignee, and not in the name of the city: Dyer v. North, 44 Cal. 157, 160; Dyer v. Pixley, 44 Cal. 153; Bays v. Lapidge, 52 Cal. 481. Where an assessment has been assigned as security, and the assignee has been authorized to settle, sue for, and compromise the same, he may bring an action to foreclose the lien: Diggins v. Hartshorne, 108 Cal. 154, 165; 41 Pac. Rep. 283; but a mere right of lien is not assignable: Rauer v. Fay, 110 Cal. 361; 42 Pac. Rep. 902.

Parties defendant. It is necessary that the plaintiff make all the owners of the property assessed, parties defendant: Robinson v. Merrill, 87 Cal. 11, 12; 25 Pac. Rep. 162, and cases cited; Hancock v. Bowman, 49 Cal. 413. The personal representatives of the owner, who died after the passage of the resolution of intention, but before the assessment, are not necessary parties defendant: Phelan v. Dunne, 72 Cal. 229; 13 Pac. Rep. 662. An action on the assessment may be maintained against the executor. The heirs are not necessary parties, and if originally joined as defendants, the action against them may be dismissed and judgment be rendered against the executor: Parker v. Bernal, 66 Cal. 113; 4 Pac. Rep. 1090.

Counterclaim and set-off. In an action to recover an assessment for the improvement of streets, a demand which did not arise out of proceedings upon which the assessment was based is not available as a counterclaim: Himmelman v. Spanagel, 39 Cal. 389, 392.

Burden and sufficiency of proof. In an action on a street assessment, the burden of proof that defendants are not the owners of the land is upon plaintiff, where such ownership is denied by defendants: Robinson v. Merrill, 87 Cal. 11; 25 Pac. Rep. 162. It is sufficient to show that defendants were owners of the land in fee at the time the assessment was made, and at the date of commencement of the action, without regard to the respective rights of the defendants: Whiting v. Townsend, 57 Cal. 515.

Prima facie evidence. A certificate of the City and County Surveyor and Deputy Superintendent of Streets, and the assessment, diagram, and warrant signed by the Superintendent of Streets and countersigned by the Auditor, are prima facie evidence of the fact that the contract has been duly and fully performed: Ede v. Knight, 93 Cal. 159, 163; 28 Pac. Rep. 860; Fanning v. Leviston, 93 Cal. 186; 28 Pac. Rep. 943; McDonald v. Conniff, 99 Cal. 36; 34 Pac. Rep. 71; Burke v. Turney, 54 Cal. 486; Perine v. Erzgraber, 102 Cal. 234; 36 Pac. Rep. 585; Dowling v. Conniff, 103 Cal. 75; 36 Pac. Rep. 1034; Buckman v. Landers, 111 Cal. 347; 43 Pac. Rep. 1125; Hellman v. Shoulters, 114 Cal. 136; 44 Pac. Rep. 995; 45 Pac. Rep. 1057; but the assessment, warrant, diagram, certificate, and affidavit of demand and non-payment are not prima facie evidence of any step subsequent to the return: Witter v. Bachman, 117 Cal. 318; 49 Pac. Rep. 202.

The protest and written objections of property owners displace the prima facie proof of regularity made by the warrant, assessment, and diagram: Dougherty v. Harrison, 54 Cal. 428, 429. Prima facie evidence of the fulfilment of the contract is not overcome by the City Engineer's certificate that the grading was not done to the official line and grade: Buckman v. Landers, 111 Cal. 347; 43 Pac. Rep. 1125.

A prima facie case is made out, in an action to enforce the lien of a street assessment, by introducing the warrant, assessment, and diagram in evidence, together with an affidavit of demand and non-payment; but this may be overcome by affirmative evidence of defects in the prior proceedings: Flinn v. Strauss, Ct. of App., 1st Dist., Aug. 15, 1906; 87 Pac. Rep. 414, 415.

Judgment. Essentials, validity of. In street-assessment cases there is no personal liability, and therefore no personal judgment can be rendered against the owner: Heft v. Payne, 97 Cal. 108; 31 Pac. Rep. 844; Manning v. Den, 90 Cal. 610; 25 Pac. Rep. 435. A judgment must give such description of the property as will identify it, and prevent any controversy as to the property purchased at the sale: Diggins v. Hartshorne, 108 Cal. 154; 41 Pac. Rep. 283. A judgment is valid and conclusive where the summons was properly served: Mayo v. Ah Loy, 32 Cal. 477. If the action is against two or more owners, no decree can be entered after a dismissal as to one of them. All the owners must be before the court: Driscoll v. Howard, 63 Cal. 438; but see McSherry v. Wood, 102 Cal. 647; 36 Pac. Rep. 1010. Judgment against all of the defendants is erroneous, where one of them was not served with process: Diggins v. Reay, 54 Cal. 525.

Judgment. Penalty. Interest. As to penalty, see Bucknall v. Story, 36 Cal. 67. A judgment for street assessments draws interest from the time of its rendition: Himmelman v. Oliver, 34 Cal. 246; Dougherty v. Henarie, 47 Cal. 9; Randolph v. Payne, 44 Cal. 366; but see Haskell v. Bartlett, 34 Cal. 281.

Judgment. Allowance of attorney's fee. That only one attorney's fee can be recovered, regardless of how many different causes of action may be included in the complaint, see Hughes v. Alsip, 112 Cal. 587; 44 Pac. Rep. 1027; but see Gillis v. Cleveland, 87 Cal. 214; 25 Pac. Rep. 351.

Judgment. Findings. As to findings in street-assessment cases, see Bryer v. Chase; Jennings v. Le Roy, 63 Cal. 379; Oakland Pav. Co. v. Bagge, 79 Cal. 439; 21 Pac. Rep. 855; Spaulding v. Wesson, 84 Cal. 141; 24 Pac. Rep. 377; Brady v. Burke, 90 Cal. 1; 27 Pac. Rep. 52; Belser v. Hoffschneider, 104 Cal. 455; 38 Pac. Rep. 312.

Sale of land. Validity of. The legislature cannot validate a void street assessment, and a sale of land to satisfy such assessment would be taking property "without due process of law": Brady v. King, 53 Cal. 44; and a purchaser at the sale, under such circumstances, would acquire no title: Bucknall v. Story, 46 Cal. 589.

Sale of land. Deed. Right to redeem. The deed of the officer making the sale is prima facie evidence of the preliminary steps requisite to its validity: Clarke v. Meade, 102 Cal. 516; 36 Pac. Rep. 826; but the deed vests no title, where there was an insufficient publication of the resolution of intention: Brady v. Burke, 90 Cal. 1; 27 Pac. Rep. 52. The deed, however, without other evidence, is not prima facie evidence of title: Bucknall v. Story, 36 Cal. 67. As to right to redeem from sale, see post, sec. 20 of this chapter; Hubbell v. Campbell, 56 Cal. 527; **Kerr's Cyc. Code Civ. Proc.,** §§ 700-706.

Sec. 16. Repairs to streets not yet accepted must be done by owners; if not done, Board may do so; bids for repairs; owners liable for amount. Certificate of the Board upon completion.

Sec. 16. When any portion of the roadway of any improved street, avenue, lane, alley, court or place, or any portion of any sidewalk, in the City and County, none of which has been accepted by the Supervisors as in this Chapter provided, shall be so out of repair as to endanger persons or property passing thereon, or so as to interfere with the public convenience in the use thereof, the Board of Public Works shall require the owners or occupants of lots or portions of lots fronting on said portion of said street, avenue, alley, lane, court or place, or fronting on such portion of said sidewalk so out of repair as aforesaid, by a notice in writing, to be delivered to them or their agents, to repair forthwith said portion of said street, avenue, lane, alley, court or place, to the center line thereof, or said portion of said sidewalk, in front of the property of which he is the owner, or tenant, or occupant. The Board shall particularly specify in said notice what work is required to be done and what material shall be used in said repairs. If said repairs be not begun within five days after notice given as aforesaid, and diligently and without interruption prosecuted to completion, the Board may make such repairs, or enter into a contract with any suitable person, at the expense of the owner, tenant, or occupant, after the specifications for the doing of said work shall have been conspicuously posted by it in its office for three days inviting bids for the doing of said work. Said bids shall be delivered to it at its office on or before the second day after the completion of said posting, and opened by it on the next day following; whereupon the contract shall be awarded to the lowest responsible bidder.

All of said bids shall be preserved in the office of the Board, and shall be open at all times after the letting of the contract to the inspection of all persons; and such owner, tenant, or occupant, shall be liable to pay said contract price. Such work shall be commenced within twenty-four hours after the contract shall have been signed, and completed without delay to the satisfaction of the Board. Upon the completion of such repairs by the contractor as aforesaid to the satisfaction of the Board, it shall make and deliver to the contractor a certificate to the effect that such repairs have been properly made by said contractor to the grade, and that the charges for the same are reasonable and just, and that the Board of Public Works has accepted the same. [Amendment approved, and in effect, February 5, 1903.]

Liability for negligence. Under the Charter of the City and County of San Francisco, the Board of Public Works, and the surety upon the official bonds of defendants belonging to that Board, are liable in damages for a personal injury suffered by the plaintiff in stumbling and falling over a sidewalk in the city, which was out of repair and in a damaged condition. It is the duty of the Board of Public Works to maintain the sidewalks of the city in a reasonably safe condition; and although, under sec. 5, art. I, of the Charter, ante, the liability of the owners with the Board of Public Works is joint and several, this does not excuse liability on the part of the Board of Public Works, because it is fundamental that if several are guilty in common of a tort, the injured person has his right of damages against all or each, and may sue them either individually or collectively: Heath v. Manson, 147 Cal. 694, 701.

Amended section. The amended section read as follows: Sec. 16. When any portion of the roadway of any street, avenue, lane, alley, court or place, or any portion of any sidewalk, in the City and County, none of which has been accepted by the Supervisors as in this Chapter provided, shall be so out of repair as to endanger persons or property passing thereon, or so as to interfere with the public convenience in the use thereof, the Board of Public Works shall require the owners or occupants of lots or portions of lots fronting on said portion of said street, avenue, alley, lane, court or place, by a notice in writing, to be delivered to them or their agents personally, to repair forthwith said portion of said street, avenue, lane, alley, court or place, to the center line thereof, in front of tne property of which he is the owner or tenant, or occupant. The Board shall particularly specify in said notice what work is required to be done and what material shall be used in said repairs. If said repairs be not begun within five days after notice given as aforesaid, and diligently and without interruption prosecuted to completion, the Board many make such repairs, or enter into a contract with any suitable person, at the expense of the owner, tenant, or occupant, after the specifications for the doing of said work shall have been conspicuously posted by it in its office for three days, inviting bids for the doing of said work. Said bids shall be delivered to it at its office on or before the second day after the completion of said posting, and opened by it on the next day following; whereupon the contract shall be awarded to the lowest responsible bidder.

All of said bids shall be preserved in the office of the Board, and shall be open at all times after the letting of the contract to the inspection of all persons; and such owner, tenant, or occupant, shall be liable to pay said contract price. Such work shall be commenced within twenty-four hours after the contract shall have been signed, and completed without delay to the satisfaction of the Board. Upon the completion of such repairs by the contractor as aforesaid to the satisfaction of the Board, it shall make and deliver to the contractor a certificate to the effect that such repairs have been properly made by said contractor to the grade, and that the charges for the same are reasonable and just, and that the Board of Public Works has accepted the same.

Construction of section. What repairs are provided for. It is evident from a consideration of the provisions of this section that the repairs therein provided to be done at the expense of the lot-owners are not such as may be deemed of urgent necessity. The lot-owner is allowed five days after notice within which to begin the required repairs. If he neglects or refuses to make such repairs, the Board may, after notice, and under the procedure prescribed in said section, enter into a contract for the making of such repairs; the time necessary for the giving of notice, opening of bids, etc., make it impossible to begin the repairs until twelve days after the lot-owner has received notice to repair the street. Work that can wait twelve days is certainly not such as should be termed of "urgent necessity": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 426, 427.

Same. Compelling owners to make repairs. Under this section and the two succeeding sections of this chapter, the Board of Public Works has power to compel the abutting property owners to make needed repairs; to do the work themselves, or to enter into a contract with a suitable person to have it done, which person would have a lien for the amount expended. Furthermore, it has power to procure the arrest of the owners in default, and the fines so collected form a special fund for the repairing of sidewalks. Hence, it is not a defense, when suit is commenced against it for injuries occurring by reason of its neglect to keep the streets in repair, to say that it has no funds with which to pay for such repairs: Heath v. Manson, 147 Cal. 694, 700.

Same. Sidewalks part of street. Though the word "sidewalk," used in the first portion of this section, is not specifically repeated in the latter part, it is clear from the latter portion of the section, which gives the Board of Public Works a right to repair forthwith said portion of said street, that the word "street" is used in this section to include the sidewalks, which are always a part of it: Heath v. Manson, 147 Cal. 694, 698.

Same. Unaccepted street. What Board to issue permits. If an unaccepted street is out of repair, it is made the duty of the Board of Public Works, under sec. 16, chap. II, art. VI, to require the owners to put the street in repair. Under this section alone it would be possible to do street-work of all kinds by private contracts, the sole prerequisite being a direction from the Board of Public Works that such work shall be done. As to which Board has the power to issue permits for such work, the Charter is not clear. Permission to grade may be obtained from the Board of Public Works, and repairs may be ordered by the same Board; and it is probably quite within the power of the Board of Public Works to issue permits for other classes of street-work, all of which work is under the control and superintendence of the Board of Public Works, subject to regulations by ordinance of the Board of Supervisors, as provided ante, art. VI, chap. I. sec. 9, subd. 1: Opinions of Ex-City Attorney Franklin K Lane (1899-1902), pp. 178, 180.

Sec. 17. Contractor may sue for amount due on repairs.

Sec. 17. If the expense of the work and material for the repairs provided for in the last preceding section be not paid on demand to the contractor so employed, or his agent or assignee, said contractor, or his assignee, shall have the right to sue such owner, tenant, or occupant for the amount contracted to be paid; and the certificate provided for in said section shall be prima facie evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the Board of Public Works in a book kept by it in the office for that purpose, properly indexed, and the sum contracted to be paid shall be a lien as in case of other assessments provided for in this Chapter.

References. As to demand, see note, sec. 13, ante, of this chapter. As to lien, see note, sec. 12, ante, of this chapter. As to action for amount, see note, sec. 15, ante, of this chapter; Hart v. Gaven, 12 Cal. 476. As to prima facie character of certificate as evidence, see note, sec. 15, ante, of this chapter.

Sec. 18. Supervisors may prescribe further penalties.

Sec. 18. In addition to the remedies above given the Supervisors may prescribe the penalties that shall be incurred by any owner or person neglecting or refusing to make repairs when required, as hereinbefore provided. Such penalties shall be enforced for the use of the City and County by prosecution in the name of the People of the State of California in the Court having jurisdiction thereof, and may be applied in the case of fines, to the payment of expense of any such repairs not otherwise provided for.

Compelling repairs. Penalty. The owner of lands may be required to keep the street in front of them in repair: Hart v. Gaven, 12 Cal. 476. That penalty for failure to make repairs is valid, see Hart v. Gaven, 12 Cal. 476.

Sec. 19. "Owner" of property defined. Lessee may pay.

Sec. 19. The person owning the fee, or the mortgagee of such fee, or the person who, on the day the action is commenced, appears by deed duly recorded in the County Recorder's office of the City and County, to have the legal title to the land, or the person in possession of lands, lots, portion of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as executor, administrator or guardian of the owner, shall be regarded, treated and deemed to be the ''owner'' for all the purposes of this Chapter. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

References. As to owner, see note, sec. 15, ante, of this chapter, and note, sec. 7, ante, of this chapter, and note, sec. 18, of this chapter. As to tenant, see Himmelmann v. Townsend, 49 Cal. 150.

Sec. 20. Lessee may deduct payment from rent.

Sec. 20. Any tenant or lessee of any lot of land on which has been imposed an assessment under the provisions of this

Chapter may pay said assessment, or he may discharge any liability imposed thereon by virtue of the provisions of this Chapter, or he may redeem the property within the time prescribed by law, if legally sold on execution, and may deduct the amount so paid from the rents due and to become due from him; and he shall have a lien upon, and may retain possession of, said lots until the amount so paid and advanced, with legal interest thereon, be satisfied from accruing rents or by payment by the owner.

References. As to right to redeem, see Hubbell v. Campbell, 56 Cal. 527; **Kerr's Cyc. Code Civ. Proc.,** §§ 700-706.

Sec. 21. Records of Board open to inspection.

Sec. 21. The records kept by the Board of Public Works shall have the same force and effect as other public records, and duly certified copies therefrom may be used in evidence with the same effect as the originals. Said records shall, during all office hours, be open, free of charge, to the inspection of any citizen wishing to examine them.

Sec. 22. Service of notices.

Sec. 22. Notices in writing required to be given by the Board may be served by any person over the age of twenty-one years, and the fact of such service may be verified by the oath of the person making it. Such oath may be taken before the Secretary of said Board or before any member thereof.

Sec. 23. Accepted streets. City to keep in repair. Register of accepted streets.

Sec. 23. When any street or portion of a street has been or shall hereafter be fully constructed to the satisfaction of the Board of Public Works and of the Supervisors, and is in good condition throughout, and a sewer, gas pipes, and water pipes are properly laid therein, the same shall be accepted by the Supervisors by ordinance; and thereafter such street or portion of a street shall be kept in repair and improved by the City and County. The Supervisors shall not accept any portion of a street less than the entire width of a roadway including the curbing, and one block in length, or one entire crossing; but they may partly or conditionally accept any street, without a sewer or gas pipes or water pipes therein, if the ordinance of acceptance expressly states that they deem such sewer, or gas pipes or water pipes to be then unnecessary. In such case the lots of land previously or at any time assessable for the cost of constructing a sewer shall remain and be assessable for such cost and for the cost of repairs and restoration of the street damaged in said construction, whenever the Supervisors shall deem a sewer to be necessary and shall order it to be constructed. The Board of Public Works shall keep in its office a register of all streets accepted by the Supervisors under this section, which register shall be indexed for easy reference thereto.

Streets. Acceptance of. See San Francisco v. Certain Real Estate, 42 Cal. 513. Acceptance of work done on a street, though it may extend over the whole width of the street, does not necessarily authorize or require the acceptance of the street: Oakland Pav. Co. v. Rier, 52 Cal. 270, 276. A requirement that no street shall be accepted until it is "sewered with brick and paved and curbed with stone," does not mean that the sidewalk shall be sewered with brick and paved and curbed with stone: Phelan v. San Francisco, 62 Cal. 44. Notwithstanding the acceptance of a street, the City Council still retains jurisdiction to order its improvement: Flickenger v. Fay, 119 Cal. 590; 51 Pac. Rep. 855.

Sec. 24. Board may recommend paving. Notice of passage of ordinance of Supervisors; proposals for paving; completion of work; certificate is prima facie evidence.

Sec. 24. The Board of Public Works may at any time, without any application therefor, recommend to the Supervisors to order the paving or macadamizing of the portion of any street required by law to be paved or macadamized by the person, company or corporation having railroad tracks thereon. Upon such recommendation the Supervisors shall by ordinance order said work to be done and direct said Board to notify said person, company, or corporation of the fact of the passage of such ordinance.

The Secretary of said Board shall thereupon forthwith in writing notify said person, company or corporation of the passage of said ordinance: and if said person, company or corporation shall not within ten days after receiving said notice commence in good faith to do said work and prosecute the same diligently to completion, the Board shall invite sealed proposals for doing said work in the manner provided in this Article: and all the provisions of this Article in regard to such proposals, to the awarding of contracts, to the execution of contracts, and to the doing of public work, shall apply to all similar proceedings taken under this section. On the completion of the work to the satisfaction of the Board the contractor shall be entitled to recover from such person, company or corporation the contract price for the expense of said work, together with incidental expenses, in an action instituted in a Court of competent jurisdiction. On the trial of such action, the certificate of the Board of the completion of said work to its satisfaction shall be prima facie evidence of the regularity of all the proceedings prior thereto and of plaintiff's right to recover in said action.

Recovery of expenses from street-railway companies. Evidence. Recovery of expenses from street-railway companies to restore torn up streets: See Charter, ante, art. VI, chap. I, sec. 9, subd. 9; **Kerr's Cyc. Civ. Code.** § 489. No mode was provided in the act of March 18, 1885, Stats. 1885, p. 147, for collecting from a street-railroad corporation, whose road occupies a portion of the street, any portion of the expenses of improving the street: Schmidt v. Market etc. R. R. Co., 90 Cal. 37, 39; but the mere fact that a portion of the street is occupied by a railroad, whose duty it is to improve, or to bear the expense of improving, a part of the street, does not impair the prima facie correctness of the assessment: McVerry v. Boyd, 89 Cal. 304, 310; 27 Pac. Rep. 885. As to prima facie character of certificate as evidence, see note, sec. 15, ante, of this chapter.

Sec. 25. Full width of street.

Sec. 25. Except as otherwise in this Chapter specifically provided, no ordinance for the improvement of any street other than for sewers, sidewalks and curbs, except for the improvement of the streets constituting or lying along the water front of the City and County, and except for such work as is provided for in the next preceding section, shall be passed by the Supervisors without extending said improvement throughout the whole width of such street.

Sec. 26. "Street" defined. "Improvement" defined. "Main street" defined. "Block" defined. "Quarter block" defined. "Paved" defined; patent pavements. "Expense" and "incidental expenses" defined. Daily publication. Service and publication of notices.

Sec. 26. Wherever in this Article the word "street" occurs, it shall be held to include all streets, lanes, alleys, places and courts which have been, or may be hereafter, dedicated and open to public use, and whose grade and width have been legally established; and the grade of all intermediate or intersecting streets in any one block shall be deemed to conform to the grades as established at the crossings of the main streets.

The word "improvement" shall be held to include grading, paving, planking, macadamizing, piling and capping; and the construction and repairs of sewers, cess-pools, manholes, culverts, drains, sidewalks and curbs.

The term "main street" shall mean such street or streets as bound a block, and the term "street" shall include crossing.

The word "block" shall mean the blocks known or designated as such upon the maps and books of the Assessor.

The term "quarter block," as used in this Chapter as to irregular blocks, shall be deemed to include all lots or portions of lots, having any frontage on either intersecting street half way from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the City and County.

The word "paved" shall include any pavement of stone, iron, wood, or other material which the Supervisors may by ordinance order to be used; but no patented pavement shall be ordered during the existence of the patent therefor, until the owner of such patent shall have transferred to the City and County all right to the use of the same therein, with the privilege to any person to manufacture and lay the same upon its streets under any contract that may be awarded to him, or entered into by him with the City and County.

The term "expense" shall include the price at which the contract was awarded, and the term "incidental expenses" shall include all expenses incurred in printing and advertising the work contracted for, and all expenses for surveying, measuring and inspecting the work.

All notices and resolutions required in this Article to be published shall be published daily, legal holidays excepted, in the official newspaper.

All notices herein required to be served, whether by delivery, mailing or posting, may be so served by any male citizen of the age of twenty-one years, and his affidavit thereof shall be prima facie evidence of such service. The affidavit by the publisher of the official newspaper, or his clerk, of the publication of any notice required in this Article to be published, shall be prima facie evidence of such publication.

References. Public streets, what are. As to the meaning of the term "quarter-block," see Martin v. Wagner, 120 Cal. 623, 625; 53 Pac. Rep. 167. As to publication of the resolution, see ante, sec. 3 of this chapter. As to effect of affidavit of service, see note, sec. 13, ante. As to public streets in general in the City and County of San Francisco, see Diggins v. Hartshorne, 108 Cal. 154; 41 Pac. Rep. 283; San Francisco v. Burr, 108 Cal. 460; 41 Pac. Rep. 482. East Street, San Francisco, is a public street: Barton v. McDonald, 81 Cal. 265, 267; 22 Pac. Rep. 855. Proof that the street is laid down as a public street on a map of the city is not conclusive proof that it is a public street: Whelan v. Boyd, 93 Cal. 500, 501; 29 Pac. Rep. 69; People v. Sperry, 116 Cal. 593; 48 Pac. Rep. 723. If there is no public street, there can be no valid street assessment, for no recovery can be had if street-work is done on private property: Cook v. Sudden, 94 Cal. 443, 444; 29 Pac. Rep. 949.

Establishing grade of streets. As to change of grade of streets, see In Matter of Beale Street, 39 Cal. 495; Appeal of Houghton, 42 Cal. 35; People v. San Francisco, 43 Cal. 91; Montgomery Avenue Case, 54 Cal. 579; Jennings v. Le Roy, 63 Cal. 397. The grade of a street cannot be established by general ordinance: City of Napa v. Easterby, 76 Cal. 222; 18 Pac. Rep. 253.

In the City and County of San Francisco, the statute which fixes the grades of certain streets at their points of intersection fixes the grade not only at the points specially mentioned, but also at all intermediate points, by simply connecting the named points by a straight line: Gafney v. San Francisco, 72 Cal. 146, 152; 13 Pac. Rep. 467; but establishing the official grade of two crossings of the same street, which crossings are two blocks apart, does not establish the official grade of the intervening portion of the street: Dorland v. Bergson, 78 Cal. 637, 639; 21 Pac. Rep. 537. The County Surveyor's certificate that he has examined the work of macadam and curbs done on a certain street, and finds curbs to official line, is not sufficient to prove an establishment of the official grade: Dorland v. Bergson, 78 Cal. 637; 21 Pac. Rep. 537; compare Chambers v. Satterlee, 40 Cal. 497.

Definitions. "Quarter-block"; "macadamizing"; "additional" macadamizing. As to the meaning of the term "quarter-block," see Martin v. Wagner, 120 Cal. 623, 625; 53 Pac. Rep. 167. To "macadamize" a street or road means to cover it by a process introduced by Macadam, which consists of the use of small stones, of a uniform size, consolidated and leveled by heavy rollers: Partridge v. Lucas, 99 Cal. 519, 520; 33 Pac. Rep. 1082. Authority to "macadamize" a particular street includes authority to require rock gutterways: Burk v. Altschul, 66 Cal. 533; 6 Pac. Rep. 393: but "macadamizing" a street does not include the construction of sidewalks: Himmelmann v. Satterlee, 50 Cal. 68; Dyer v. Chase, 52 Cal. 440; nor curbing: Beaudry v. Valdez, 32 Cal. 269.

"Incidental expenses" includes what. The term "incidental expenses," as used in the act of April 1, 1872, Stats. 1871-02, p. 804, was confined to contracts for grading: Deady v. Townsend, 57 Cal. 298, 299. Engineering-work done is properly included as an item of "incidental expenses": McDonald v. Conniff, 99 Cal. 386, 392; 34 Pac. Rep. 71: but expenses incurred on abandoned proceedings cannot be so considered: Fitzhugh v. Ashworth, 119 Cal. 393, 400; 51 Pac. Rep. 635.

Sidewalk as part of street. See Himmelmann v. Satterlee, 50 Cal. 68; Dyer v. Chase, 52 Cal. 440; Phelan v. San Francisco, 62 Cal. 44.

Sec. 27. Closing of streets. Procedure. Hearing. Recommendation. Ordinance.

Sec. 27. When the owners of all the lands fronting upon any street which is less than forty feet in width, for the entire distance of said street, or for the distance of one or more entire blocks, shall petition the Board of Public Works that the said street, or that portion thereof upon which said lands front, be closed, the Board may pass a resolution recommending that the same be closed. Before passing such resolution the Board shall cause a notice of the application to be published in the official newspaper, and shall fix a time and place at which it will consider the same and hear objections thereto. Upon such hearing it shall determine whether it will recommend that the street be closed; and if it shall so determine, it shall transmit such recommendation to the Supervisors. Thereupon the Supervisors may pass an ordinance that the street be closed; and the same shall not thereafter be, or be deemed to be, a public street, or subject to any public expense or improvement;

and the land theretofore included within the roadway and sidewalks of said street shall thereafter be the property of the City and County. No such ordinance shall be passed until the petitioners shall have paid all the expenses of said proceedings.

Closing of streets. The legislature has power to vacate a street in a city, and it may delegate such power to the municipal authorities of the city: Brook v. Horton, 68 Cal. 554, 558; 10 Pac. Rep. 204. The legislature has power to vacate a portion of a street, although a person who owns property fronting on another portion of the street will be incidentally injured by such action: Pollac v. San Francisco Orphan Asylum, 48 Cal. 490, 493; but see Bigelow v. Ballerino, 111 Cal. 559: 44 Pac. Rep. 307, showing that such a person cannot be deprived of his property without just compensation, and may insist that the closing of the street is void as to him until such compensation has been made. Municipal authority to vacate a street depends upon the will of the legislature: Pollac v. San Francisco Orphan Asylum, 48 Cal. 490; San Francisco v. Burr, 108 Cal. 460; 41 Pac. Rep. 482. Where the power to close a street has been conferred by the legislature upon the Board of Supervisors, the determination of such Board that the public interest and convenience requires such street to be closed, is conclusive, and not open to review by the courts: Symons v. San Francisco, 115 Cal. 555, 560; 42 Pac. Rep. 913; 47 Pac. Rep. 453.

Abandonment of streets. See Brook v. Horton, 68 Cal. 554; 10 Pac. Rep. 204; City of Eureka v. Armstrong, 83 Cal. 623; 22 Pac. Rep. 928; 23 Pac. Rep. 1085; Los Angeles v. Cohn, 101 Cal. 373; 35 Pac. Rep. 1002.

Sec. 28. New streets and subdivisions. Approval of plat, and filing thereof. Minimum width.

Sec. 28. In all cases where lands in the City and County shall be hereafter subdivided and laid out into blocks or plats, sub-lots, streets and alleys, or when new streets or public grounds shall be laid out, opened, donated or granted to the public by any proprietor, the map or plat thereof shall be submitted to the Board of Public Works for its approval, and if the Board approve the same, such approval shall be by it indorsed upon the said map or plat, and said map with said approval shall then be filed in the office of the Recorder; and without such approval indorsed thereon no such map or plat shall be filed in the office of the Recorder, or have any validity; nor shall any street, alley, or public ground hereafter opened and dedicated as such, become or be a public street or be subject to any public improvement or expense without such approval, indorsement and record. No street hereafter laid out shall be approved or become a public street unless the same shall be at least forty feet in width and two hundred feet distant from any parallel street.

System of district assessment. The method of opening new streets is laid down in the Charter, and is by means of the well-known system of district assessment, under restrictions and after proceedings therein provided: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 401.

Sec. 29. Cleaning and sprinkling of streets. Districts. Inviting proposals for cleaning and sprinkling; separate bids for each district; provisions applicable.

Sec. 29. The Board shall cause the public streets to be properly cleaned and sprinkled and for that purpose may employ such laborers and other employees as may be necessary, and may, with the consent of the Supervisors, expressed by Ordinance, purchase teams, machinery, materials and other appliances as may be deemed necessary for said work; but the Board must give the preference to hand-sweeping so far as it can do so with reference to the proper sweeping of the streets and the funds at its disposal.

The Board may, if the public interest will be subserved, cause the cleaning and sprinkling of the public streets to be performed, either in whole or in part, by public contract. In such case the Board shall divide the city, or such portions of the city as it shall determine to have cleaned or sprinkled by public contract, into such number of districts as in its judgment will best induce competition for bids, and secure the cleaning or sprinkling of such streets at the lowest cost.

The Secretary of the Board shall, under its direction, cause to be published for a period of ten (10) days a notice inviting proposals for cleaning or sprinkling each of said districts in accordance with the specifications on file at the office of the Board. Bids shall be made for each district separately. All the provisions of this Article in relation to the making and opening of bids, awarding of contracts and entering into and performance of contracts shall be applicable to said contracts. [Amendment approved, and in effect, February 5, 1903.]

Amended section. The amended section read as follows: Sec. 29. The Board shall annually invite proposals for cleaning and sprinkling such of the streets of the City and County as the Board shall determine should be cleaned and sprinkled at the public expense. Before causing notice for such proposals to be published the Board shall divide the City and County into such number of districts as in its judgment will best induce competition for bids, and secure the cleaning and sprinkling of the streets at the lowest cost. The Secretary of the Board shall, under its direction, on the first Monday in May of each year, cause to be published for a period of ten days a notice inviting proposals for cleaning and sprinkling each of said districts, specifying in said notice the streets of each district which are to be cleaned and sprinkled, the number of times a week that they are to be cleaned and sprinkled, and the amount of security to be given with each contract. Bids shall be made for each district separately. All the provisions of this Article in relation to the making and opening of bids, awarding of contracts and entering into and performance of contracts, shall be applicable to said contracts.

The Board may, at the time it invites proposals for said cleaning and for said sprinkling, also invite proposals for said cleaning separately and for said sprinkling separately, and may award such contracts accordingly as may be for the best interest of the City and County.

The Board may also, with the consent of the Supervisors expressed by ordinance, purchase one or more machines for sweeping the streets, and may enter into contracts for sweeping the streets with said machines; but the Board must give the preference to hand-sweeping so far as it can do so with reference to the proper sweeping of the streets and to the funds at its disposal.

Construction of section. This direction to the Board of Public Works is clear and explicit. It was evidently in contemplation that the cleaning and sprinkling of streets would be done by contract. It clearly appears that it was the intendment of the Charter provisions that the Board should annually call for bids for the doing of this work, and award a contract therefor. If the work should not be done according to a contract let, the Board of Public Works should decline to approve the bills therefor. The Board itself would have power to clean and sprinkle the streets until a new contract could be entered into. In the making of a new contract the Board has power to reserve the right to terminate any contract awarded for such work, if not done in conformity with the specifications thereof: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 678, 680, 681.

Sec. 30. Urgent repairs. Contract for over five-hundred-dollar repairs.

Sec. 30. The Board shall cause to be made all urgent repairs upon the public streets that may from time to time be requisite for the public safety, and for that purpose may employ such laborers as may be necessary, and at such wages as may be from time to time fixed by the Board; but when the expense of the repairs upon any street or portion of a street shall exceed the sum of five hundred dollars, exclusive of materials to be furnished from the Corporation Store Yard, the same shall be done under contract awarded in the manner provided in this Article.

Duty of Board. It is the duty of the Board of Public Works to make repairs upon the roadway of an unaccepted street at the expense of the City and County when such repairs are deemed by the Board to be of urgent necessity, but when not of urgent necessity, such repairs are to be made at the expense of the lot-owner, as provided in section 16, supra: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 426, 428.

Sec. 31. Contracts for materials.

Sec. 31. The Board shall, from time to time, after it shall have been directed so to do by the Supervisors by ordinance, invite proposals for supplying to the City and County such materials as may be required for the repair of the public streets or for any improvement thereof, and such proceedings shall be had in awarding the contracts therefor as are in this Article provided for awarding other contracts.

Materials for street repairs. How to be obtained. While it was the intention that the Supervisors should directly make contracts for the furnishing of supplies generally to the Board of Public Works, as well as to other departments, materials for street repairs and street improvements are to be obtained upon bids by the Board of Public Works after the Board of Supervisors have properly authorized the necessary proposals: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 659, 660. See Charter, ante, art. II, chap. II, sec. 1, note, "Janitor's and Engineer's supplies," and "Supplies to Board of Public Works."

Sec. 32. Corporation store-yard. Storekeeper; duties; liabilities. Delivery of articles. Old paving materials.

Sec. 32. The Supervisors shall select some place in the City and County which shall be known as the Corporation Store Yard, wherein shall be kept all supplies, material, implements and machines belonging to the City and County, to be used in repairing or cleaning and sprinkling the streets or for any improvement thereon. The Board of Public

Works shall appoint a Storekeeper for said Yard who shall hold his office during its pleasure. He shall have the custody of said Yard and of all the supplies, material and implements therein, and shall keep books of account in which shall be kept a systematic account of all purchases, and of the receipt of supplies and material under any contracts awarded under the provisions of the preceding section, and of the delivery thereof, which books shall at all times show the amount of said material and supplies on hand and in store, and when, to whom, and for what purpose each article was delivered. He shall be responsible for all material and supplies in said Yard, and shall not deliver any article except upon the written order or requisition of the President and Secretary of the Board of Public Works, and he shall take the written receipt, indorsed upon said order, of each person to whom any delivery is made, specifying the date of such delivery and the amount and kind of material and supplies delivered. For any deficiency in his accounts or for the delivery of any article without such order or requisition and receipt, he shall be liable upon his official bond. All cobble stones, or stone blocks or other material with which any street or portion of a street may have been paved or planked shall, if at any time removed from said street, be taken to said Yard, and there kept, accounted for and disposed of by the Storekeeper in the same manner as other supplies.

Curbstones are property of city. The curbstones of accepted streets are the property of the city, and the Board of Public Works has no power to give such curbstones to a property owner, although he would substitute therefor other and better material. Such curbstones should be removed to the Corporation Yard: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 364.

Distinction. "Materials" and "supplies." A distinction is made, in this sèction, between "materials" furnished under the preceding section and "supplies": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 659, 660.

CHAPTER III.

Opening, Straightening, Widening, Extending and Changing the Grade of Streets.

Sec. 1. Majority petition to open streets, etc. Board to make estimate of expense. Deposit of amount.

Section 1. When an application shall be made to the Board of Public Works for the straightening, widening or extending of any street, or for the laying out, establishing or opening of a new street, signed by the owners of a majority of the frontage of the lands upon the line of said street, or proposed street, and such improvement requires the condemnation of private property, and the Board shall by resolution determine that the improvement would be of public benefit, it shall make an estimate of the expense of such improvement, and determine by resolution the district which will be affected by, and should be assessed for, the expense of such improvement. No proceedings shall be had upon the filing of such petition until after the persons signing the same shall have deposited with the Secretary of the Board an amount of money which, as may be determined by the Board, will be sufficient to defray all the expense that may be incurred in case the Supervisors shall not pass an ordinance for said improvement.

References. As to street law, "Act of Nineteen Hundred and Three," see **Henning's General Laws,** pp. 1361-1370. For provisions of the act of March 18, 1885, and its amendments, commonly known as the Vrooman Act, Stats. 1885, p. 147, see **Henning's General Laws,** pp. 1311-1370. Duties of Superintendent of Streets as to opening and closing streets, see ante, art. VI, chap. I, sec. 7. As to construction of section 3 of the Vrooman Act, see City Street Imp. Co. v. Babcock, 139 Cal. 690; 73 Pac. Rep. 666. As to construction of the Vrooman Act upon various questions, see O'Dea v. Mitchell, 144 Cal. 374; 77 Pac. Rep. 1020; Haughawout v. Raymond, 148 Cal. 311; 83 Pac. Rep. 53. As to construction of the Street Bond Act of March 9, 1893, **Henning's General Laws,** pp. 1339-1346, see German Sav. and Loan Soc. v. Ramish, 138 Cal. 120; 69 Pac. Rep. 89; 70 Pac. Rep. 1067; Chase v. Trout, 146 Cal. 350; 80 Pac. Rep. 81; Creed v. McCombs, 146 Cal. 449; 80 Pac. Rep. 679.

The Vrooman Act. Change of Grade Act. The street law, commonly known as the Vrooman Act, Stats. 1885, p. 147, and its amendments, is a general law: Redondo Beach v. Cate, 136 Cal. 146; 68

Pac. Rep. 586; **Henning's General Laws,** pp. 1311, 1370: and is in force in San Francisco: See Charter, ante, art. VI, chap. II. sec. 1, note. That it is in force in Los Angeles, see Banaz v. Smith, 133 Cal. 102; 65 Pac. Rep. 309. The Vrooman Act, **Henning's General Laws,** pp. 1311, and the Change of Grade Act, Stats. 1893, p. 89, **Henning's General Laws,** pp. 1332-1337, are to be treated as in pari materia: German Sav. and Loan Soc. v. Ramish, 138 Cal. 120; 69 Pac. Rep. 89; 70 Pac. Rep. 1067.

Same. Estimate of work. The Vrooman Act does not seem to require as a prerequisite that the City Council shall have an estimate of street-work before it passes the resolution of intention, unless the Council shall be desirous of issuing serial bonds for the work, or to place the work in a district: Sacramento Pav. Co. v. Anderson, 1 Cal. App. Rep. 672, 673; 82 Pac. Rep. 1069.

Street Bond Act. Lien. The lien provided for in the Street Bond Act of March 9, 1893, **Henning's General Laws,** pp. 1339, 1341, is prior to all other liens: German Sav. and Loan Soc. v. Ramish, 138 Cal. 120; 69 Pac. Rep. 89; 70 Pac. Rep. 1067.

Opening of streets. Law governing. As to petition, see next section of this chapter. As to resolution of intention, see art. VI, chap. II, sec. 3, note. As to special acts for the opening of particular streets, see Mulligan v. Smith, 59 Cal. 206; Lent v. Tillson, 72 Cal. 404; 14 Pac. Rep. 71; Kahn v. Supervisors, 79 Cal. 388; 21 Pac. Rep. 849. A complete system for the opening of streets in the City and County of San Francisco was provided for in the act of April 25, 1863, Stats. 1863, p. 560. It appears that this act has not been repealed by § 4372 of **Kerr's Cyc. Pol. Code,** by the Constitution, or by any act prior to the general act of 1889, Stats. 1889, p. 70, and is still in force: San Francisco v. Kiernan, 98 Cal. 614; 33 Pac. Rep. 720. As to validity of proceedings had under and in conformity with the act of March 6, 1889, Stats. 1889, p. 70, providing for the opening and widening of streets, see Davies v. Los Angeles, 86 Cal. 37; 24 Pac. Rep. 771; Wilcoxon v. San Luis Obispo, 101 Cal. 508; 35 Pac. Rep. 988.

Opening of streets. Fixing of boundaries of district. Proceedings in passing a resolution of intention, and in declaring the exterior boundaries of a district to be affected by a contemplated improvement, are legislative in character: Wulzen v. Board of Supervisors, 101 Cal. 15, 22; 35 Pac. Rep. 353; Sinton v. Ashbury, 41 Cal. 525; Dehail v. Morford, 95 Cal. 457; 30 Pac. Rep. 593. As to formation and diagram of assessment district, see Banaz v. Smith, 133 Cal. 102; 65 Pac. Rep. 309.

Necessity of improvement. What is conclusive of. When the several steps provided by the statute have been taken, and the resolution and ordinance ordering the work have been regularly adopted, the action of the Council is final, and conclusive of the necessity of the improvement, and courts will not adjudicate the question of such necessity in an action or proceeding for the condemnation of lands necessary to the improvement: City of Santa Ana v. Harlin, 99 Cal. 538, 540; 34 Pac. Rep. 224.

Sec. 2. Petition for street improvement; resolution of intention. Map of district affected.

Sec. 2. If within three months after the passage of the resolution determining such district, a majority of the owners of the land within said district who shall also be the owners of two-thirds of the superficial square feet of the property included within said district, and of three-fourths in value of said property—including improvements thereon—estimating said value according to the last preceding Assessment Book of the City and County, shall present to the Board a petition for said improvement, verified by their oaths and describing the lands of which they are the owners, and showing the amount at which the same was assessed upon the last preceding Assessment Book of the City and County, and stating that they are the owners and in possession of the lands named in said petition, the Board shall pass a resolution of its intention to recommend such improvement to the Supervisors, and shall in such resolution specify a day upon which it will hear any objections that may be made to such improvement.

Before passing such resolution of intention, the Board shall cause to be prepared a map or diagram of the district affected by and to be assessed for the expense of such improvement, upon which shall be delineated the several lots of land upon which said assessment is to be levied, and also the lots of land which are to be taken for such improvement, and showing the name of the person to whom the said lots were assessed upon the last Assessment Book of the City and County, together with the amounts of such assessments.

Application or petition. Necessity of. An application or petition is an absolute necessity to confer jurisdiction upon a Board of Supervisors to proceed with street-work: Turrill v. Grattan, 52 Cal. 97; Dyer v. Miller, 58 Cal. 585; Gately v. Leviston, 63 Cal. 365; Kahn v. Board of Supervisors, 79 Cal. 388; 21 Pac. Rep. 849; Spaulding v. North San Francisco etc. R. R. As., 87 Cal. 40; 24 Pac. Rep. 600; 25 Pac. Rep. 249.

Same. Essentials of, generally. The application or petition must contain, substantially, everything required by the statute: In re Grove Street, 61 Cal. 438. It is a fundamental principle, in proceedings for the widening, etc., of streets, that any requirement of the statute which has a semblance of benefit to the owner must be observed, in order to give to the municipality jurisdiction in the premises: Dehail v. Morford, 95 Cal. 457, 460; 30 Pac. Rep. 593. There is no legal difference between no petition and a petition lack-ing the substantial averments required by statute: Turrill v. Grattan, 52 Cal. 97.

Same. Signing of. An application or petition for the opening of an avenue must be signed by the owners. Hence, the signatures of executors, administrators, or agents having no power to charge or encumber the real property of the estate, unless authorized by the law under which they are acting, are sufficient: Mulligan v. Smith, 59 Cal. 206, 225. It was necessary, under the Montgomery Avenue Act, for the petition to be signed by the owners of a majority in frontage, whose names were on the last preceding assessment roll as owners: Kahn v. Board of Supervisors, 79 Cal. 388; 21 Pac. Rep. 849. The signature of a tenant in common does not bind the estate of his co-tenant: Mulligan v. Smith, 59 Cal. 206, 225; and neither the president nor the secretary of a corporation has authority to sign a petition for street improvement: Mulligan v. Smith, 59 Cal. 206, 225. Even the decision of the City Council upon the petition is not conclusive that it was properly signed, where that body had no power to do any act looking to the opening of the street: In re Grove Street, 61 Cal. 438, 452; Mulligan v. Smith, 59 Cal. 206, 234; and see Kahn v. Board of Supervisors, 79 Cal. 388; 21 Pac. Rep. 849.

Sec. 3. Publication of resolution of intention.

Sec. 3. The Secretary of the Board shall thereupon cause said resolution of intention to be published for a period of thirty days, non-judicial days excepted, and shall also cause a copy of said resolution to be deposited, postage prepaid, in the Post Office at the City and County, addressed to each person whose name is delineated upon said map, at least ten days before the day named for hearing objections thereto.

What notice shall be given. The legislature has the undoubted right to say what notice shall be given in this class of cases, so long as the notice required to be given is reasonable, and the proceeding is not arbitrary, oppressive, or unjust. The notice provided for need not be a personal one: Davies v. Los Angeles, 86 Cal. 37, 46; 24 Pac. Rep. 771; but constructive notice by publication and posting is sufficient: Lent v. Tillson, 72 Cal. 404, 416; 14 Pac. Rep. 71; Davies v. Los Angeles, 86 Cal. 37, 46; 24 Pac. Rep. 771.

Sec. 4. Objections may be filed. Hearing.

Sec. 4. At any time before the day fixed in such resolution for hearing objections to such improvement, any person interested therein may file with the Secretary of the Board his objections thereto, briefly stating the grounds thereof and the nature of his interest; and upon the day fixed for hearing the same, or some day to which the hearing thereof shall then be postponed, the Board shall proceed to hear and determine the sufficiency of any objections which may have been filed.

Objections. Waiver. As to effect of a remonstrance to the improvement, see ante, art. VI, chap. II, sec. 4, note. A property owner does not waive his right to object to a want of jurisdiction by the fact that he appeared and filed an objection to the improvement and afterwards protested against the report of the commissioners: Dehail v. Morford, 95 Cal. 457; 30 Pac. Rep. 593.

Sec. 5. Sufficiency of objections. Recommendation of street improvement.

Sec. 5. If the Board shall determine that such objections are sufficient to prevent a recommendation of the improvement, it shall pass a resolution to that effect, and no further proceedings shall be had under said petition. If no objections have been filed, or if the Board shall determine that the objections filed are insufficient, it may pass a resolution recommending to the Supervisors said improvement, and in its recommendation shall specially report to the Supervisors whether in its opinion the land within the district specified as affected by said improvement will be benefited to the extent of the expense of said improvement.

Sec. 6. Resolution of intention recommended by Board of Public Works to be transmitted to Clerk of Board of Supervisors. Ordinance for the improvement.

Sec. 6. If the Board shall pass a resolution recommending said improvement, the Secretary shall forthwith transmit to the Clerk of the Supervisors a copy of said resolution, together with the petition, map, estimate of the expense of said improvement, and any objections that may have been filed: and the Supervisors shall at their first regular meeting thereafter, or at any meeting to which said hearing may have been adjourned, pass upon said recommendation, and may by resolution adopt or reject the same. If said recommendation is rejected no further action shall be had thereon or upon said petition. If the Supervisors shall adopt said recommendation, they shall within thirty days thereafter pass an ordinance providing for said improvement, and may in said ordinance prescribe such rules for the conduct of the Board of Public Works respecting the assessment and valuation to be made by said Board and providing for the condemnation of said lands, and the collection of said assessment, in addition to, and not inconsistent with, the rules herein prescribed, as to said Supervisors shall seem expedient. Upon the passage of said ordinance the Clerk of the Supervisors shall transmit a certified copy thereof to the Board of Public Works.

Sec. 7. Survey of improvement. Valuation of lots taken. Publication. Measure of damages.

Sec. 7. Upon the receipt by the Board of a certified copy of said ordinance the Board shall cause to be made an accurate survey of the contemplated improvement, and a map thereof, upon which shall be delineated each and every lot of land to be taken or appropriated for the purposes of the intended improvement, showing its extent in feet and inches, and also each and every lot of land within the district determined to be affected by, and which is to be assessed for, the cost and expense of said improvement. After said survey and map are made, the Board shall pass a resolution fixing a day on or after which it will proceed to value the several lots of land to be taken for the purpose of the intended improvement, and ascertain and determine the damages and benefits which may result therefrom.

The Secretary of the Board shall cause said resolution to be published for a period of ten days before the day fixed in said resolution for proceeding to make said valuation.

In estimating the damage to any lot by reason of any portion of said lot having been taken for public use, as herein provided, the measure of damage to said lot shall be the difference at the time of said appropriation between the value of said lot in its entirety and its value as reduced in size by the appropriation of a part thereof to said public use. The expense of the improvement shall include the value of the land taken, with the improvements, if any thereon, and the expense of the proceedings for its appropriation or condemnation.

Sec. 8. Board to determine value of lots to be taken. Benefits and damages. Assessment.

Sec. 8. On the day named in said notice and upon such other days as the matter may be continued to, from time to time, the Board shall proceed to value the several parcels of land necessary to be taken for the purpose of the intended improvement. Such value shall be ascertained as of the time of said inquiry, independently of any appreciation or depreciation that may be caused to the same by reason of such intended improvement, and the Board shall fix such valuation as the amount to be given to the owners therefor. The Board shall also assess the benefits and damages which may result from the contemplated improvement of the lands within said district, and shall distribute the total value of all the lands and improvements taken, together with the damages, if any, caused by said improvement to the adjacent lands, and the estimated cost and expense of said improvement, in the form of an assessment upon each and every lot of land within the district determined to be affected by said improvement in proportion to the benefits which the Board shall determine will be received by said lots and lands.

Assessment of benefits. A law which directs the Superintendent of Streets to assess benefits, without prescribing the precise mode of assessment, is not unconstitutional: See Greenwood v. Morrison, 128 Cal. 350; 60 Pac. Rep. 971.

Sec. 9. Meetings to be public. Owners must file plats with Board.

Sec. 9. The meetings of the Board, when engaged in making said valuation and assessment, shall be public and held at the office of the Board, and all persons interested in such valuation and assessment shall have the right to be present and be heard in person or by counsel. All persons claiming any interest in the lands to be taken for said improvement, or that will be damaged thereby, are required at or during such hearing, to file with the Board, plats, and a description of their respective lots of land.

Sec. 10. Authenticated valuation prima facie evidence.

Sec. 10. In making said assessment and valuation the Commissioners shall act as a Board, and said assessment and valuation shall be authenticated by the signatures of said Commissioners, and every assessment and valuation so authenticated and recorded in the Book of Assessments for Condemnation shall be prima facie evidence of the correctness and regularity of all the proceedings of said Board and of the Supervisors prior to the date of such record.

Sec. 11. Procedure in determining values.

Sec. 11. In determining the valuation of the property which is taken for said improvement the Board shall in its report set forth, under appropriate headings, a brief description of each lot thereof, the amount allowed for the same, the name of the owner of each lot, when known (and if unknown, that fact shall be stated), and the name of any claimant thereto, or to any interest therein; and in making the assessment for the expense of said improvement the Board shall set forth in the assessment, under appropriate headings, a brief description of each lot assessed, the amount assessed against the same, the person to whom said property was assessed upon the next preceding Assessment Book of the City and County, the owner thereof, if known (and if unknown, that fact shall be stated), and the total amount of the expense of said improvement.

Sec. 12. Publication and notice of valuation and assessment. Report of Board to be filed with County Clerk. Condemnation proceedings.

Sec. 12. Upon the completion of said valuation and assessment, the Board shall cause to be published for ten days a notice of the completion of said assessment and valuation, notifying all parties therein to examine the same; and for that purpose said assessment, valuation and map shall be open and exhibited to public inspection at the office of the Board for thirty days after the first publication of said notice. During said period of thirty days, but not thereafter, the Board may alter, change or modify said assessment. Upon the expiration of said thirty days it shall complete the same in the form of a report and schedule, embracing the value of the lands taken and the assessment of said value, together with the expense of the improvement, as hereinbefore provided, upon the several lots of land embraced within the aforesaid district. Said report and schedule shall, within sixty days after the first publication of the last mentioned notice, be filed in the office of the County Clerk, together with a petition signed by the President of said Board, to the Superior Court, praying for a judgment of said Court confirming the assessment contained therein against the respective lots therein described as assessed, and for the condemnation and conveyance to the City and County, upon the payment of the value thereof as ascertained by said report, of each of the lots of land alleged in said petition to be necessary to be taken for said improvement.

Condemnation proceedings. Private property cannot be taken or damaged for public use without just compensation. For sufficient allegation as to necessity of taking land for public use, see Los Angeles v. Waldron, 65 Cal. 283; Const., art. I, sec. 14. An order of the Board of Supervisors condemning land is judicial in its nature, and in excess of the jurisdiction of such Board: Wulzen v. Board of Supervisors, 101 Cal. 15; 35 Pac. Rep. 353. After the proper preliminary steps have been taken, the action of the City Council in ordering work to be done is final, and conclusive as to the necessity of the improvement: City of Santa Ana v. Harlin, 99 Cal. 538; 34 Pac. Rep. 224. In condemnation proceedings, where the answer contains no allegations of any defect or irregularity in the proceedings, there is no issue under which evidence of such defect or irregularity is admissible: Santa Ana v. Harlin, 99 Cal. 538, 542; 34 Pac. Rep. 224. In a proceeding for the condemnation of land for a street, the question of dedication is not in issue: City of San Jose v. Freyschlag, 56 Cal. 8.

Sec. 13. Hearing of objections by Court. Jurisdiction and judgment of Court. Lien upon lands.

Sec. 13. On filing such petition, and upon application to said Court, the Presiding Judge thereof shall appoint some day, not less than ten nor more than thirty days thereafter, as the time when any objections to the confirmation of said report will be heard by said Court. The Clerk of said Court shall thereupon cause to be published for ten days in the official newspaper, a notice of the filing of said report and of the day assigned for the hearing of any objections that may be made thereto. Any party interested therein may at any time before the day assigned for the hearing thereof file in said Court his objections in writing to the confirmation of the same, specifying his objections; and all objections not specified shall be deemed waived. Upon the day fixed in said order said Court shall proceed to the hearing of any objections that may have been filed to the confirmation of said report. Upon proof of publication of said notice said Court shall have and take jurisdiction of said report and of the subject matter thereof as a special proceeding; and upon said day and at any other time or times to which said hearing may be adjourned may hear the allegations of the parties and proofs adduced in support of the same, and may confirm said report, or change, alter or modify the same, or cause the same to be changed, altered or modified by said Board. Said judgment of confirmation shall be a lien upon each lot of land described in said report for the amount assessed against the same, and shall provide for the conveyance to the City and County of each and every of the lots of land declared necessary for the purpose of said improvement, upon the payment of the value thereof as fixed by such judgment. Said lien shall remain in force until said assessment is paid or legally discharged.

Sec. 14. Appeal to Supreme Court. Judgment roll. Attorney of Board.

Sec. 14. Any person who has filed objections to the confirmation of said report may appeal from said judgment to the Supreme Court at any time within thirty days after the entry of such judgment. The amount of the undertaking on such appeal shall be fixed by said Presiding Judge, and such undertaking shall be made payable to the City and

County. For the purposes of such appeal the judgment roll of the proceedings in the Superior Court shall consist of the report, objections, judgment and bill of exceptions, or so much thereof as may be necessary to determine said appeal. If said judgment be reversed or modified the Superior Court shall take such proceedings as will cause said assessment and valuation to be made in accordance with the decision of the Supreme Court. The City Attorney shall act as the attorney for the Board of Public Works in proceedings under this Chapter.

References. As to ground of appeal under the Vrooman Act, see Creed v. McCombs, 146 Cal. 449; 80 Pac. Rep. 679.

Sec. 15. Confirmation of report and judgment. Tax Collector to collect assessment or sell the lots. Redemption.

Sec. 15. After the confirmation of said report, if the time for appealing has expired, or if an appeal has been taken and the judgment appealed from has been affirmed, upon the application of the Board of Public Works the Clerk of the Superior Court shall issue a certificate to that effect to said Board; and said assessment shall then be recorded in the Book of Assessments for Condemnation kept for that purpose, and the record thereof signed by the President and Secretary of said Board. The Secretary shall then deliver to the Tax Collector the assessment so confirmed and recorded, together with said certificate of said Clerk, and a warrant to the Tax Collector directing him to collect the said assessment. The Tax Collector shall, if any part of said assessment is not paid within twenty days after said assessment, certificate and warrant shall have been delivered to him, give notice in the official newspaper by ten days' publication therein that he will, on a day and time certain, to be not more than ten days after the expiration of said publication, sell such of the lots of land on which the assessment thereon remains unpaid, describing each of said lots so delinquent, together with the amount of the assessment and costs due on each, and shall include as part of said costs five per centum on the amount due on each assessment so delinquent, as and for the expenses of said sale. He shall thereupon sell such lots pursuant to such notice. Redemption may be made from such sale within the time and in the manner and on the terms as on sales made under execution as provided in the Code of Civil Procedure of this State. If any amount remain in the hands of the Tax Collector as a result of the collection of said assessment beyond that necessary to make the compensation provided for in the next succeeding section, and to pay the necessary expenses of said sale, such surplus shall be paid by him proportionately to those whose land has been sold as aforesaid.

Sec. 16. Disbursement of compensation in condemnation suits.

Sec. 16. Upon the report of the Tax Collector to the Supervisors that the amount of said assessment has been collected and paid into the treasury, the Supervisors shall order to be paid out of the treasury the sums fixed in said judgment as the compensation for the lands to be taken for said improvement; and upon the delivery to the Treasurer by any person entitled to receive compensation for any lot of land so taken, of a conveyance of said lot of land to the City and County, approved by the City Attorney, and a certificate from the City Attorney that such person is entitled to the compensation for the lands described in said conveyance, the Treasurer shall pay to said person the amount awarded for said lot by said judgment of condemnation, after the demand therefor has been audited by the Auditor.

Sec. 17. Court to place Board in possession in disputed cases.

Sec. 17. If the owner of any of said lots or subdivisions neglect or refuse for ten days to make and deliver such conveyance, or be unable by reason of incapacity to make a good and sufficient conveyance thereof to the City and County, or if the City Attorney shall certify that the title to any of said lots is in dispute or uncertain, or that there are conflicting claimants to the amount awarded as compensation therefor, or to any part thereof, a warrant upon the treasury for the payment of the amount so awarded shall be by order of the Supervisors drawn by the President and Secretary of the Board of Public Works, together with a certificate of the Treasurer indorsed thereon that the said warrant has been registered by him and that there are funds in the treasury set apart to pay the same, shall be deposited with the County Clerk; and thereupon, upon a petition to said presiding Judge by the President of the said Board, setting forth said facts, said Judge shall issue an order ex parte directing the Sheriff to place said Board in the possession of said land.

Sec. 18. Court to adjudicate conflicting claims.

Sec. 18. At any time thereafter any claimant to said award, or any part thereof, may file his petition in said Superior Court against all parties in interest for an adjudication of all conflicting claims to the same, or for an order that the same be paid to him, and thereupon such proceedings shall be had thereon as may be agreeable to law and equity. Upon entry of final judgment in such proceeding, the County Clerk shall, after said demand has been audited by the Auditor, collect the warrant and pay the proceeds to the person or persons named in said judgment as entitled thereto. It shall be provided in said judgment that before receiving the proceeds of said warrant said party, or some one authorized in his behalf, shall make and execute to said City and County and deliver to the County Clerk a sufficient conveyance of said lot of land. Immediately after taking possession of the land required for said street, the Board shall report that fact to the Supervisors.

Sec. 19. Interested members must not act. Mayor to appoint.

Sec. 19. If any member of the Board be interested in any of the land to be taken or assessed for such improvement, the Mayor shall appoint, for the purpose of making the said assessment and valuation only, some competent person to act as one of the Commissioners therefor, who shall possess the same qualifications as are provided for said Commissioners, and who, before entering upon his duties, shall take the oath of office required of said Commissioners, and enter into a bond for such amount as may be fixed by the Supervisors.

Sec. 20. Supervisors may change grade.

Sec. 20. The Supervisors may, on the written recommendation of the Board of Public Works, change the grade of any street or street crossing in the manner and to the grade set out in such recommendation; but no grade shall be changed unless the same proceedings are taken by way of providing compensation to those who may suffer damage by such change of grade, so far as such proceedings may be applicable, as are hereinbefore provided in the matter of opening, straightening, widening and extending streets; and where such proceedings are not applicable they may be supplemented by ordinance of the Supervisors.

Construction of section. The language of this section does not require that the procedure for the fixing of grades shall be the same as that required in opening, straightening, or widening a street. It only makes it necessary that in the matter of providing compensation to those who suffer damage by such change of grade, the proceedings in street-opening shall be conformed to, and even this only in "so far as such proceedings may be applicable": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 531.

Grade and change of grade of streets. As to power to grade streets, see ante, art. VI, chap. II, sec. 26, note; City of Napa v. Easterby, 76 Cal. 222; 18 Pac. Rep. 253. As to proof of grade of streets, see Chambers v. Satterlee, 40 Cal. 497; Gafney v. San Francisco, 72 Cal. 146; 13 Pac. Rep. 467; Dorland v. Bergson, 78 Cal. 637; 21 Pac. Rep. 537. The act of April 1, 1878, changing the grade of Bay Street, in the City and County of San Francisco, was constitutional: Jennings v. Le Roy, 63 Cal. 397. As to change of grade of streets in San Francisco, see also In Matter of Beale Street, 39 Cal. 495; Appeal of Houghton, 42 Cal. 35; People v. San Francisco, 43 Cal. 91; Montgomery Avenue Case, 54 Cal. 579. The power to lay out, open, and grade streets carries with it, by necessary implication, the power to establish the grade of such streets: Himmelmann v. Hoadley, 44 Cal. 213.

Same. Initiatory steps, how taken. The initiatory steps in changing the grade of a street are to be taken by the Board of Public Works, and upon their recommendation as provided for in sec. 5, chap. III, art. VI, the Board of Supervisors shall proceed as provided in sec. 6, chap. III, art. VI: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 242, 244.

Same. Procedure, explanation of. A procedure for opening, straightening, widening, extending, and changing the grade of streets is prescribed in art. VI, chap. III. The duties of the Board of Supervisors, in this connection, are found in section 6 of said article and chapter. It is therein provided that the Board of Supervisors shall, at their first meeting after the receipt of the resolution of recommendation of the Board of Public Works, provided for in section 5, or at any meeting to which such hearing may have been adjourned, pass upon such recommendation, and by resolution adopt or reject the same. If said recommendation is rejected, no further action shall be had thereon, or upon the petition accompanying the resolution. If the recommendation is adopted, the Supervisors shall, within thirty days thereafter, pass an ordinance providing for the improvement recommended, and may in said ordinance prescribe such rules for the conduct of the Board of Public Works regarding the assessment and valuation to be made by said Board, and the collecting of said assessment, in addition to, and not inconsistent with, the rules prescribed in said chapter as shall seem expedient to the Supervisors. Upon the passage of the ordinance, the Clerk of the Board of Supervisors is to transmit a certified copy thereof to the Board of Public Works. Than those set forth, no other proceedings are to be taken by the Board of Supervisors under sec. 20, chap. III, art. VI, unless the Board desires to supplement such proceedings as therein provided: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 242, 243.

CHAPTER IV.

Sewers and Drainage.

Sec. 1. General drainage system.

Section 1. The Board of Public Works shall devise a general system of drainage, which shall embrace all matters relative to the thorough, systematic and effectual drainage of the City and County, and shall from time to time make to the Supervisors such recommendations upon the subject of sewerage and drainage as it may deem proper.

References. As to liability of cities for damage to property by want of repair of any sewer, see Charter, ante, art. I, sec. 5; O'Hale v. Sacramento, 48 Cal. 212; Bloom v. San Francisco, 64 Cal. 503; 3 Pac. Rep. 129; Spangler v. San Francisco, 84 Cal. 12; 23 Pac. Rep. 1091. As to proper form of judgment against a city for taking care of its sewerage during a particular fiscal year, see Fresno etc. Co. v. McKenzie, 135 Cal. 497; 67 Pac. Rep. 900.

Sewers and drainage. The law which regulates this subject is the same law as that which regulates the improvement of streets: See Charter, ante, art. VI, chap. II; and act of March 14, 1881, Stats. 1881, p. 77.

Governing law. Vrooman Act. That the act of March 18, 1885, Stats. 1885, p. 147, commonly known as the Vrooman Act, superseded the Consolidation Act, and became the governing law of the City and County of San Francisco as to all matters therein provided for, including the construction of sewers within the municipality, see Anderson v. De Urioste, 96 Cal. 404; 31 Pac. Rep. 266.

Sec. 2. Powers of Board.

Sec. 2. The Board shall prescribe the location, form and material to be used in the construction, reconstruction and repairing of all public sewers, manholes, sinks, drains, cesspools, and all other appurtenances belonging to the drainage system, and of every private drain or sewer emptying into a public sewer, and determine the place and manner of the connection.

Sec. 3. Rules and regulations.

Sec. 3. The Board shall recommend to the Supervisors rules and regulations concerning the public and private sewers and drains in the City and County, and upon recommendation of said Board, the Supervisors are authorized to pass an ordinance establishing the same and prescribing the penalties for any violation thereof.

Sec. 4. Permits to make connections.

Sec. 4. No person shall connect with, or open or penetrate, any public sewer or drain without first obtaining a permit in writing from said Board, and complying with the rules and regulations of the Board in reference thereto.

Sec. 5. Recommendations by Board.

Sec. 5. The Board may also recommend to the Supervisors the construction of such canals, sewers, tunnels, ditches, drains, embankments, reservoirs, pumping works, machinery and other works necessary for the proper and effectual drainage of the City and County, together with plans for connecting the same with sewers and private drains already constructed or thereafter to be constructed.

Sec. 6. Purchase of property.

Sec. 6. The Supervisors may, upon the recommendation of the Board of Public Works, by ordinance passed by not less than fourteen affirmative votes, authorize the purchase of any personal property or the acquisition by purchase or condemnation of any real estate which may be necessary for the construction of any sewer or the making of any improvement provided for in this Chapter.

Sec. 7. Agreement on damages.

Sec. 7. The Board may, with the like approval of the Supervisors, agree with the owners of any real estate, upon which it is deemed desirable to construct any sewer or other improvement relative to sewerage or drainage, upon the amount of damage to be paid to such owners for the purpose of such improvement and for the perpetual use of said real estate for such purpose.

Sec. 8. General sewer system.

Sec. 8. The Board may, when authorized by ordinance of the Supervisors passed by not less than fourteen affirmative votes, construct such sewers, reservoirs and pumping works as may be necessary to carry out the general system of sewerage for the City and County.

References. As to resolution of intention to construct sewer, and publication of award of contract for constructing sewer, see Banaz v. Smith, 133 Cal. 102; 65 Pac. Rep. 309.

Sec. 9. Condemnation of property. Proceedings.

Sec. 9. When, upon the recommendation of the Board of Public Works, the Supervisors shall determine upon any improvement for the purpose of sewerage and drainage which necessitates the acquisition or condemnation of private property, and the Board is unable to agree with the owner thereof, upon the amount of compensation or damages to be paid therefor, or when such owner is in any way incapable of making any agreement in reference thereto, and in all cases in which the Board shall deem it most expedient, it shall, when authorized by the Supervisors expressed by ordinance, have the right to cause said property to be condemned, and to institute proceedings for the condemnation of such property, or for the ascertainment of such damages in the manner, so far as the same may be applicable, which is provided in this Article for the condemnation of real estate when necessary for the opening of any new street.

Condemnation of private property. As to condemnation for opening streets, see Charter, ante, art. VI, chap. III, sec. 12. Sewerage is a public use: **Kerr's Cyc. Code Civ. Proc.**, § 1238, subd. 8. When a city or town decides for itself, as it may do, that a sewer is desired, it is not bound to prove that such sewer is necessary, but only that the taking of the property it seeks to condemn is necessary for the construction of the sewer. When it shows that the use to which the property is to be applied is a public use, the inquiry on that head is closed: City of Pasadena v. Stimson, 91 Cal. 238, 253; 27 Pac. Rep. 604. An action by city authorities to condemn a right of way for a sewer will not be prohibited on the ground that there is an absence of an averment or proof that the city authorities were unable to agree with defendant for the right of way, or because it does not appear from the record of the proceedings of the City Council that it ever authorized the commencement of the action: Bishop v. Superior Court, 87 Cal. 226, 230; 25 Pac. Rep. 435.

CHAPTER V.

Harbors and Wharves.

Sec. 1. Supervisors to control wharves and harbor.

Section 1. All the Wharves, Water Front and Harbor of San Francisco which now belong or may hereafter belong to the City and County, or over which it may at any time lawfully exercise jurisdiction and control, shall be under the management and control of the Supervisors. All said wharves shall be built and repaired by the Board of Public Works, after proceedings had as provided in this Article for the improvement or repair of public buildings.

References. As to San Francisco harbor and State Harbor Commissioners, see **Kerr's Cyc. Pol. Code**, §§ 2520-2554. As to wharves, chutes, and piers, see **Kerr's Cyc. Pol. Code**, §§ 2906-2921.

Water-front. See Eldridge v. Cowel, 4 Cal. 80; Guy v. Hermance, 5 Cal. 73; People v. Williams, 64 Cal. 498; 2 Pac. Rep. 393. Concerning the title to tide-lands, see City of San Pedro v. Southern Pac. R. R. Co., 101 Cal. 333; 35 Pac. Rep. 993. The mere establishment of a harbor line does not deprive the State of the right to control and regulate the navigable waters within the line: People v. Williams, 64 Cal. 498, 499; 2 Pac. Rep. 393.

Wharves. As to right to use wharves, see People v. Broadway Wharf Co., 31 Cal. 33. As to lease to ferry company of wharf in San Francisco by Harbor Commissioners, see People v. San Francisco etc. R. R. Co., 35 Cal. 606. As to what wharves are controlled by the Board of Harbor Commissioners, see **Kerr's Cyc. Pol. Code,** § 2524. As to lease of wharf, see Pacific Coast S. S. Co. v. Kimball, 114 Cal. 414; 46 Pac. Rep. 275. As to lease of a portion of the harbor for the erection and repair of a wharf, see Pacific Coast S. S. Co. v. Kimball, 114 Cal. 414; 46 Pac. Rep. 275. The Charters of San Francisco of 1850 and 1851 did not vest in the city any proprietary interest in the wharves: People v. Broadway Wharf Co., 31 Cal. 34, 42.

Sec. 2. Tolls to be regulated by ordinance.

Sec. 2. The Supervisors shall by ordinance fix and regulate the tolls for wharfage and dockage, and shall provide for the collection of the same, except where the wharves are under the jurisdiction of the Board of State Harbor Commissioners, or may provide that no charges, tolls, dockage or wharfage be imposed or collected. The Supervisors shall not have power to dispose of any wharf, but they may lease any wharf for a term not exceeding two years.

"Wharfage" and "dockage." See People v. Steamer America, 34 Cal. 676; People v. Pacific R. M. Co., 60 Cal. 323; People v. Roberts, 92 Cal. 659; 28 Pac. Rep. 689. As to distinction between "dockage" and "wharfage," see People v. Roberts, 92 Cal. 659; 28 Pac. Rep. 689. As to right to collect dockage, see Pacific Coast S. S. Co. v. Kimball, 114 Cal. 414; 46 Pac. Rep. 275. That dockage is collected to assist in defraying the expense of dredging, see People v. San Francisco Gas Light Co., 54 Cal. 248.

ARTICLE VII.

PUBLIC SCHOOLS AND LIBRARIES.

CHAPTER I.

The Board of Education.

Sec. 1. Four School Directors; salary; qualifications. Board of Education, how constituted; term.

Section 1. The School Department shall be under the control and management of a Board of Education composed of four School Directors, who shall be appointed by the Mayor, and who shall give their entire time to the duties of their office. They shall each receive an annual salary of three thousand dollars. They shall not be less than thirty years of age and must have been residents of the City and County for at least five years prior to their appointment. The Board shall never be so constituted as to consist of more than two members of the same political party. The term of office of the Directors shall be four years. Those first appointed shall so classify themselves by lot that they shall respectively go out of office at the expiration of one, two, three and four years.

References. As to education, see Const., art. IX, sec. 1-12; **Kerr's Cyc. Pol. Code,** §§ 1385-1889.

Schools. Law applicable to. The matter of education seems to be a State and not a "municipal affair," and the general provisions of **Kerr's Cyc. Pol. Code** concerning the control of schools by boards of education are applicable to the City and County of San Francisco: Earle v. Board of Education, 55 Cal. 489, 495; Kennedy v. Board of Education, 82 Cal. 483; 22 Pac. Rep. 1042; City of San Diego v. Dauer, 97 Cal. 442; 32 Pac. Rep. 561; Kennedy v. Miller, 97 Cal. 429; 32 Pac. Rep. 558.

The legislature is directed, in art. IX, sec. 4, of the Constitution, to provide for "a system of common schools," and in pursuance of this direction the legislature, in **Kerr's Cyc. Pol. Code,** §§ 1517-1891, has amplified the system outlined in the Constitution, and provision is made for the organization of school districts, the election of officers therefor, as well as of the officers authorized by the Constitution, defining their powers and duties, providing for the proper application of the revenue from the State school fund, and for the raising of additional money by taxation for the support of the common schools: Kennedy v. Miller, 97 Cal. 429, 432; 32 Pac. Rep. 558.

Sec. 2. President; term. Secretary; salary.

Sec. 2. The Board shall organize by electing one of its number President, who shall serve for one year and until his successor is elected. The Board may elect a Secretary who shall not be a member of the Board, and who shall receive an annual salary of eighteen hundred dollars.

Sec. 3. Weekly meetings. Rules. Ayes and noes.

Sec. 3. The Board shall meet at least once a week and at such other times as it may determine. It shall establish rules for its proceedings; but the concurrent vote of a majority of its members shall be necessary to transact business. In every instance where a power is exercised under this Article by the Board the vote thereon shall be taken by ayes and noes and entered in the minutes of the Board.

CHAPTER II.

Schools.

Sec. 1. School Department comprises what.

Section 1. The School Department shall comprise all the public schools of the City and County and shall include primary and grammar schools and may include evening, deportment, technical, cosmopolitan, high and normal schools.

Reference. As to what the public school system shall include, see Const., art. IX, sec. 6.

Kindergarten schools. The provisions of our statutes relative to the kindergarten system of instruction show, at most, an intention on the part of the legislature to authorize the maintenance, by any district, at its option, of kindergarten classes, for the doing of a special work preliminary to the beginning of what is generally designated as primary school work. The fact that it is entirely optional with any district to do or not to do this preliminary special work is alone sufficient to exclude kindergarten classes from the uniform and mandatory system of common schools called for by sec. 5, art. IX, of the Constitution, and, consequently, from the term "primary and grammar" schools, as those words are used in section 6 of the same article, in relation to the use which may be made of the general State school funds, and such fact also relegates them to that portion of the "public school system" which includes schools constituted by municipal or district authority, but which are not maintained by public school funds: Los Angeles County v. Kirk, 148 Cal. 385; 83 Pac. Rep. 250.

Sec. 2. Night schools.

Sec. 2. Adults shall be entitled to free instruction in the evening schools; but no child under fourteen years of age shall be admitted to such schools.

Right to attend schools. That a school district is a corporation organized solely for educational purposes, and may take by will, see Estate of Blumer, 59 Cal. 131. An action to compel the admission of a child to a public school is properly brought against the teacher alone: Tape v. Hurley, 66 Cal. 473, 475; 6 Pac. Rep. 129. Chinese children are entitled to admission to the public schools: Tape v. Hurley, 66 Cal. 473; 6 Pac. Rep. 129; Ward v. Flood, 48 Cal. 36; 17 Am. Rep. 405. Separate schools cannot be established for colored children: Wysinger v. Crookshank, 82 Cal. 588; 23 Pac. Rep. 54; and they cannot be excluded from the public schools established for white children: Ward v. Flood, 48 Cal. 36; 17 Am. Rep. 405; Wysinger v. Crookshank, 82 Cal. 588. When separate schools for Indian children and for children of Mongolian or Chinese descent are established, they must not be admitted into any other school, except the kindergarten: See **Kerr's Cyc. Pol. Code,** § 1662.

CHAPTER III.

Powers of the Board of Education.

Sec. 1. (1) To establish and change schools. (2) Teachers; salaries; promotion and dismissal, causes; charges against. (3) Certificates. (4) Rules and regulations. (5) To investigate charges. (6) To hold and lease property. (7) Census marshals; vacancies. (8) Actions; City Attorney. (9) Disbursement of moneys; salaries of teachers and employees; segregation of funds; estimate of amount. (10) Demands to be filed and signed; certificate; warrant; salary roll. (11) Lease of real property. (12) Trust funds.

Section 1. In addition to the powers conferred by the general laws of the State, the Board of Education shall have power:

To establish and change schools.

1. To establish and maintain public schools as provided in this Article, and to change, modify, consolidate or discontinue the same as the public welfare may require.

General powers. The Board of Education of the City and County of San Francisco is a creature of the legislature, and has only such powers as have been conferred upon it. It has no power to appoint "inspection" teachers: Barry v. Goad, 89 Cal. 215, 221; 26 Pac. Rep. 785. As to powers and duties of trustees and boards of education, see **Kerr's Cyc. Pol. Code,** § 1617. As to power of boards of education to establish schools exclusively for colored children, see Ward v. Flood, 48 Cal. 36; 17 Am. Rep. 405; Wysinger v. Crookshank, 82 Cal. 588; 23 Pac. Rep. 54; **Kerr's Cyc. Pol. Code,** § 1662. As to compensation of county boards of education, see Thom v. County of Los Angeles, 136 Cal. 375; 69 Pac. Rep. 18.

Same. Compelling change of text-books. As to compelling change of text-books on penmanship in the public schools of San Francisco, see Mark v. Superior Court, 129 Cal. 1; 61 Pac. Rep. 436. Where a system of penmanship is in use in the public schools, whether by legal adoption or by silent acquiescence of teacher and pupils, boards of education cannot change the text-books of such system in use without the publication required by § 1874 of **Kerr's Cyc. Pol. Code:** Greene v. Board of Education, 131 Cal. 165, 169; 63 Pac. Rep. 161. The adoption of one system of penmanship for another is certainly a change of the text-books in use in the public schools: Greene v. Board of Education, 131 Cal. 165; 63 Pac. Rep. 161.

Teachers; salaries; promotion and dismissal, causes; charges against.

2. To employ such teachers and persons as may be necessary to carry into effect its powers and duties; to fix, alter and approve their salaries and compensation, and to withhold for good and sufficient cause the whole or any part of the wages, salary or compensation of any person or persons employed as aforesaid; and to promote, transfer and dismiss teachers: but no teacher in the department at the time of the adoption of this Charter, or who shall be hereafter appointed, shall be dismissed from the department, except for insubordination, immoral or unprofessional conduct, or evident unfitness for teaching. All promotions of teachers shall be based solely on merit and successful teaching. Nothing in this section shall be construed to prevent the Board from removing teachers holding only special certificates or serving a probationary term. Charges against teachers must be formally made by the Superintendent after due investigation, and shall be finally passed upon by the Board after giving the accused teacher due hearing.

Removal of teachers for cause. Under § 1793 of **Kerr's Cyc. Pol. Code,** which forbids the removal of teachers except for cause, a teacher who has been elected precisely as has been provided for, without limitation as to time, can be dismissed only for the causes named in this section: Kennedy v. Board of Education, 82 Cal. 483, 489; 22 Pac. Rep. 1042. A teacher who has been elected without limitation as to time is entitled to hold the position, and can only be dismissed for cause: Kennedy v. Board of Education, 82 Cal. 483; 22 Pac. Rep. 1042.

Same. Dismissal without cause. If a board of education employs a teacher for a definite time, it may dispense with the services of such teacher at the end of such time: Marion v. Board of Education, 97 Cal. 606, 608; 32 Pac. Rep. 643. A female teacher who holds simply a drawing-teacher's certificate, may be dismissed without cause, as not being within the protection of § 1793 of **Kerr's Cyc. Pol. Code,** concerning the tenure of her position: Bradley v. Board of Education, 1 Cal. App. Rep. 212, 214; 81 Pac. Rep. 1036. The vice-principal of a grammar school in San Francisco, who was summarily removed without cause, cannot, after the lapse of three years, ask to be reinstated by a writ of mandate: Harby v. Board of Education, 2 Cal. App. Rep. 418; 83 Pac. Rep. 1081. Conceding that a board of education has power to consolidate classes or to discontinue a school or class, it follows that it has power to determine what teacher shall, in such event, be retired: Bates v. Board of Education, 139 Cal. 145, 147; 72 Pac. Rep. 907.

Same. Who not subject to removal. A board of education cannot make a rule that a teacher's position shall become vacant when she marries, because her marriage is not a matter of School Department business: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 554, 555. See Mitchell v. Winnek, 117 Cal. 520; 49 Pac. Rep. 579; Kennedy v. Board of Education, 82 Cal. 483; 22 Pac. Rep. 1042. Those regularly elected teachers who were in the Department prior to the going into effect of the Charter are not subject to removal under a rule of the Board of Education declaring their positions vacant on marriage: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 334, 336. See Charter, art. VII, chap. III, sec. 2; **Kerr's Cyc. Pol. Code,** § 1793; Kennedy v. Board of Education, 82 Cal. 483; 22 Pac. Rep. 1042; also Mitchell v. Winnek, 117 Cal. 520; 49 Pac. Rep. 579. If the Board of Education cannot add to the regular requirements for admission to serve as a teacher, it cannot add to the conditions under which it may dismiss from such service: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 334, 335.

Certificates.

3. To grant, to renew and, for the causes mentioned in section one, subdivision two, of this Chapter, to revoke, teachers' certificates.

Life diplomas. Authority to teach. Life diplomas issued prior to 1880, under the provisions of §§ 1521 and 1754 of **Kerr's Cyc. Pol. Code,** authorize the holders to teach in any public school, except high schools in which languages other than English are required to be taught by such teachers. Life diplomas issued from 1880 to 1893 under the provisions of **Kerr's Cyc. Pol. Code,** §§ 1521, 1775, and 1792, where the grade has not heretofore been fixed by the local board of examination, authorize the holders to teach in any public school. And life diplomas issued since 1893, under the provisions of §§ 1521, 1775, and 1792 of **Kerr's Cyc. Pol. Code**, as amended in that year, qualified their holders to teach in the grades corresponding to the grade of the diplomas, upon simple recordation of the diploma with the County Superintendent: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 138, 143.

Right to certificate. Mandate. A teacher who is entitled to a certificate may compel its issuance by a writ of mandate: Keller v. Hewitt, 109 Cal. 146; 41 Pac. Rep. 871.

Rules and regulations.

4. To establish and enforce all necessary rules and regulations for the government and efficiency of the schools and for carrying into effect the school system; to remedy truancy; to compel the attendance at school of children between the ages of six and fourteen years who may be found idle in public places during school hours.

Rights of teacher, how determined. Vacations. The statutory right of a teacher is determined by the statute, and not by rules adopted by a board of education: Kennedy v. Board of Education, 82 Cal. 483, 492; 22 Pac. Rep. 1042. A board of education, in regulating vacations, can pass no rules in contravention of the statutory provisions: Kennedy v. Board of Education, 82 Cal. 483; 22 Pac. Rep. 1042; Fairchild v. Board of Education, 107 Cal. 92; 40 Pac. Rep. 26.

To investigate charges.

5. To investigate charges against any person connected with or in the employ of the School Department, and to take testimony in such investigations.

To hold and lease property.

6. To receive, to take on lease and to hold in trust for the City and County any real estate belonging to or claimed by the School Department. To hold in trust all personal property that may have been or may hereafter be acquired by the School Department.

School district may take by will. As to school houses and lots, see post, art. VII, chap. VI, sec. 1, note. That a school district is a corporation for educational purposes, and may take by will, see Estate of Bulmer, 59 Cal. 131; and see Kennedy v. Miller, 97 Cal. 429; 32 Pac. Rep. 558.

Census marshals; vacancies.

7. On or before the first day in April in each year, to appoint School Census Marshals, and notify the Superintend-

ent of Common Schools of such appointments. Any Census Marshal found incompetent may be discharged by the Superintendent of Common Schools. Should the Board fail or neglect to fill the vacancy so caused within three days thereafter by the appointment of a person competent to perform the duties of Census Marshal, such vacancy may be filled by the Superintendent of Common Schools.

Census Marshals. Extra compensation. As to duty of Census Marshal, see **Kerr's Cyc. Pol. Code**, §§ 1624-1648. It is provided in § [illegible] of **Kerr's Cyc. Pol. Code** that the compensation of the Census Marshal shall not exceed ten dollars a day for time necessarily and actually employed. Hence any extra compensation allowed the Census Marshal by way of bonus or premium, for the excellent manner in which his work was done, is improperly granted, as a board of education has no power to exceed the fixed rate of compensation. Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. [illegible].

Actions; City Attorney.

5. To sue in the name of the City and County for lots, lands and property belonging to or claimed by the School Department. To prosecute and defend all actions at law or special proceedings or suits in equity concerning the enjoyment and possession of such lots, lands and property. To require the services of the City Attorney in all actions, suits and proceedings by or against the Board of Education.

Board of Education. Right to sue. The Board of Education of the City and County of San Francisco is a legal body capable of suing. It may therefore sue to recover lots conveyed to it by the Fund Commissioners. Board of Education v. Fowler, 19 Cal. 11, [illegible]; and may maintain ejectment for a school lot. Board of Education v. Donahue, 53 Cal. 190, [illegible]; and see Board of Education v. Martin, 92 Cal. 209, 28 Pac. Rep. 799.

Same. Right to command services of City Attorney. In a controversy between the Board of Education and the Superintendent of Schools of the City and County of San Francisco it is not within the power of the Board of Education to command the services of the City Attorney where no corporate interest is involved in such controversy. Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 286.

Under the last clause of this subdivision it is the duty of the City Attorney to respond to and obey the requisition of the Board. Such clause is a mere requirement that the Board shall demand his service when required and that he shall respond to the demand. His simple refusal does not authorize the Board to engage other counsel. The Board has the right to require his services in all actions or proceedings by or against such Board, and the Board has no power to incur expenses in the employment of other counsel to assist a person to a seat as a member of the Board. ([illegible] v. Webster, 159 Cal. [illegible], [illegible] Pac. Rep. [illegible].)

Same. Bond on appeal. Although the Charter may purport to define the powers and duties of the Board of Education in reference to the public schools in the same language as that the Legislature in the Political Code, yet those powers and duties are referable to the legislative authority, and not to the Charter. It follows that whenever an appeal is taken by the Board of Education of the City and County of San Francisco, or by a like board throughout the State, it must give an undertaking, procure an order of the court dispensing with it or have it expressly waived by the adverse party. (Mitchell v. Board of Education, 137 Cal. 372, [illegible], 70 Pac. Rep. 180.)

Disbursement of moneys; salaries of teachers and employees, segregation of funds; estimate of amount.

3. To establish regulations for the disbursement of all moneys belonging to the School Department or to the Common School Fund, and to secure strict accountability in the expenditure thereof; to provide for the prompt payment, not later than the tenth day of every month, of all salaries due and allowed officers, teachers and other employees of the School Department. For this purpose the Auditor shall annually segregate so much of the Common School Fund as shall not exceed twenty-eight dollars for each pupil in average daily attendance in the Public Schools of the City and County during the preceding fiscal year. The amount so segregated shall not be applied to the payment of any demand against such Common School Fund during any fiscal year other than for salaries, until all salaries for that fiscal year have been fully paid or provided for. The Board shall ascertain and transmit to the Auditor on or before the first Monday in April of each year an estimate of the amount required for such segregation within such limit of twenty-eight dollars.

Demands. Necessity of approval. Under § [illegible] of **Kerr's Cyc. Pol. Code,** and Charter (post, art. VII, chap. IV, sec. 3 and art. VII, chap. III, sec. 1, subd. 18), it would appear that the approval of the Board of Education is necessary to the payment of a demand for expenses incurred by the Superintendent of Public Schools while in attendance upon a convention of county superintendents of schools. (Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. [illegible].)

Diversion of school funds. A board of education has no authority to divert moneys of the school fund to other purposes than such as have been expressly authorized by law: Barry v. Goad, 89 Cal. 215; 26 Pac. Rep. 785.

Teacher's right to salary. A teacher is entitled to his or her salary during the term of his or her employment, and while he or she is able and willing to perform the duties incident thereto: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 105.

Demands to be filed and signed; certificate; warrant; salary roll.

10. All demands payable out of the Common School Fund shall be filed with the Secretary of the Board of Education, and after they have been approved by the Board, they shall be signed by the President of the Board and the Superintendent and sent to the Auditor. Every demand shall have indorsed upon it a certificate, signed by the Secretary, of its approval by the Board of Education, showing the date thereof, and the law authorizing it by title, date and section. Every person in the employ of the School Department entitled to a salary therefrom shall receive a warrant for the amount due and approved by the Board, signed by the President and Secretary thereof. The entire monthly salary roll of the Department shall be made up by the Secretary of the Board, and after being duly audited by the Finance Committee thereof and approved by a majority of all the members of the Board, shall be indorsed in the same manner as other demands. The salary roll so audited, approved and indorsed, shall be immediately transmitted to the Auditor not later than the third day of every month for comparison with the individual salary warrants issued in the manner above provided; but payment shall be made only on the individual warrants issued in accordance herewith.

Liability. Forged warrants. Supplies. As to liability for warrants forged by deputy superintendent of schools, see Fresno Nat. Bank v. Hawkins, 93 Cal. 551; 29 Pac. Rep. 233. The Board of Education of the City and County of San Francisco may be compelled by mandamus to draw its drafts upon the School Fund to pay for supplies furnished to the schools under its care, in pursuance of its contract for such supplies: Raisch v. Board of Education, 81 Cal. 542, 547; 22 Pac. Rep. 890.

Lease of real property.

11. To lease to the highest responsible bidder, for the

benefit of the Common School Fund, for a term not exceeding twenty years, any real property of the school department not required for school purposes; but no lease shall be made except after advertisement for bids for at least fifteen days in the official newspaper and by an affirmative vote of at least three members of the Board approved by an ordinance of the Supervisors.

Trust funds.

12. To receive and manage property or money acquired by bequest or donation in trust for the benefit of any school, educational purpose or school library; to carry into effect the terms of any bequest not in conflict with the general laws or this Charter; and to sell such personal property as shall no longer be required for use in the schools. All moneys realized by such sales shall be at once paid into the treasury to the credit of the Common School Fund.

School district may take by will. A school district is a corporation, organized solely for educational purposes, and may take by will: Estate of Bulmer, 59 Cal. 131; Kennedy v. Miller, 97 Cal. 429; 32 Pac. Rep. 558.

Sec. 2. Proposals for supplies. Provisions governing proposals.

Sec. 2. The Board shall annually, before the first day of May, make a list of supplies estimated to be required by the School Department for the ensuing fiscal year, stating in clear and explicit terms the quantity and kind of articles needed and how and when they shall be delivered, and shall invite proposals for furnishing the same by advertising therefor for at least ten days in the official newspaper.

The provisions of Article II, Chapter III, of this Charter, in regard to the advertising for proposals, the affidavit and security accompanying the same, the presentation and opening of proposals, the awarding of contracts and the security for the performance thereof, shall, so far as the same can be made applicable, apply to all proposals and contracts made, awarded or entered into for furnishing supplies to the School Department. Any contract made in violation of any provision of this Article shall be void.

Sec. 3. Annual report to Supervisors.

Sec. 3. The Board shall, during each year, transmit to the Supervisors a report in writing for the preceding fiscal year, stating the number of schools within its jurisdiction, the length of time they have been kept open, the number of pupils taught in each school, the average daily attendance of pupils in all the public schools, the number, names and salaries of teachers, the dates of their appointments and the character of the certificates held by them, the amount of money drawn from the treasury by the Department during the year, distinguishing the State fund from all others, the purpose for which such money has been expended, with particulars, and such other information as may be required by the State Superintendent, the Supervisors or the Mayor.

Sec. 4. Schedule of salaries.

Sec. 4. The Board shall, between the first and twenty-first days of May of each year, adopt a schedule of salaries for the next ensuing fiscal year for teachers and all employees of the School Department.

CHAPTER IV.

Superintendent of Schools.

Sec. 1. Salary.

Section 1. The Superintendent of Common Schools of the City and County shall be by virtue of his office a member of the Board of Education, without the right to vote. He shall receive an annual salary of four thousand dollars.

References. As to election of superintendents of schools, see Const., art. IX, sec. 3. As to salary of school superintendents, see **Kerr's Cyc. Pol. Code,** § 1552, note; Peachy v. Resmond, 59 Cal. 326; San Diego v. Dauer, 97 Cal. 442. That provisions of the County Government Act giving to the board of supervisors of each county of the State power to appoint a superintendent of schools did not apply to the City and County of San Francisco, see People v. Babcock, 114 Cal. 559; 46 Pac. Rep. 818. That the power to fill vacancies in office is governed by the Charter, see People v. Babcock, 114 Cal. 559; 46 Pac. Rep. 818.

Office of. Deputy as member of Board of Education. The office of Superintendent of Schools is distinct from any connection with the Board of Education, and the Superintendent of Schools cannot compel the Board of Education to receive his deputy as a member ex officio of that Board during his absence from the meetings thereof: Webster v. Board of Education, 140 Cal. 331; 73 Pac. Rep. 1070.

Mandamus. Unauthorized employment of attorney. The Superintendent of Schools cannot be compelled, by writ of mandate, to draw his requisition upon the Auditor for the expense of an attorney employed by the Board of Education without authority of law: Denman v. Webster, 139 Cal. 452; 73 Pac. Rep. 139.

Sec. 2. Four Deputy Superintendents. Additional deputies.

Sec. 2. The Superintendent shall appoint four Deputy Superintendents. The number of such deputies shall not be increased until the average daily attendance shall have reached forty-five thousand, when the Superintendent shall appoint one additional deputy, and thereafter he shall appoint one deputy for each additional eight thousand children in average daily attendance. If from any cause a vacancy occurs in the office of Deputy Superintendent, such vacancy shall be filled by the Superintendent.

References. That each county superintendent of schools may appoint a deputy, see **Kerr's Cyc. Pol. Code,** §§ 1549, 1550.

Sec. 3. Term of deputies.

Sec. 3. Of the Deputy Superintendents first appointed, the Superintendent shall appoint two for two years and two for four years. All Deputy Superintendents subsequently appointed shall hold office for four years.

Sec. 4. Qualifications of deputies.

Sec. 4. Such deputies must have had at least ten years' successful experience as teachers, and shall have been residents of the City and County at least five years preceding their appointment.

Sec. 5. Duties of Superintendent. (1) To enforce rules. (2) Annual report to Board. (3) To inform Board and recommend measures. (4) To visit all schools. (5) Studies and text-books. (6) Standing of schools.

Duties of Superintendent.

Sec. 5. In addition to the duties imposed by the general laws of the State, it shall be the duty of the Superintendent:

To enforce rules.

1. To observe and enforce all rules and regulations of the Board of Education and to see that no religious or sectarian books or teachings are allowed in the schools.

References. Sectarianism, etc. As to duties of county superintendents of schools, see **Kerr's Cyc. Pol. Code,** § 1543. That no sectarian or denominational doctrines shall be taught, or instruction therein be permitted, see Const., art IX, sec. 8.

Annual report to Board.

2. To report to the Board of Education annually, on or before the twentieth day of August, and at such other times as the Board may require, all matters pertaining to the condition and progress of the public schools of the City and County during the fiscal year, with such recommendations as he may deem proper.

To inform Board and recommend measures.

3. To inform the Board of the condition of the schools, schoolhouses and of other matters connected therewith, and to recommend such measures as he may deem necessary for the advancement of education in the City and County, and for the care and improvement of the property of the School Department.

To visit all schools.

4. To visit and examine with the assistance of his deputies all the schools at least twice a year and determine their standing and classification. To recommend rules for the promotion of pupils from grade to grade, from school to school, and for the transfer and the graduation of pupils.

Studies and text-books.

5. To recommend to the Board the courses of studies; the text-books and books for supplementary use in the public schools and the purchase of such apparatus, books, stationery and other class-room supplies as may be required in the schools.

Standing of schools.

6. To report to the Board once a month upon the standing of schools examined by him and his deputies.

Sec. 6. City Board of Examination; powers. (1) To examine applicants. (a) High school certificate. (b) City certificate, grammar grade. (c) City certificate, primary grade. (2) Special certificates. (3) Revocation of certificates. (4) To recommend city certificates.

City Board of Examination; powers.

Sec. 6. The Superintendent and his deputies shall constitute the City Board of Examination, and shall have power:

To examine applicants.

1. To examine applicants, and to prescribe a standard of proficiency, which will entitle the person examined to receive:

High school certificate.

a. A high school certificate, valid for six years, which shall authorize the holder to teach any primary, grammar, or high school in the City and County;

City certificate, grammar grade.

b. A City certificate, grammar grade, valid for six years, which shall authorize the holder to teach any primary of grammar school in the City and County;

City certificate, primary grade.

c. A City certificate, primary grade, valid for two years, which shall authorize the holder to teach any primary school in the City and County. They shall report the result of the examination to the Board of Education, and the Board shall thereupon issue to the successful candidates the certificates to which they shall be entitled.

Special certificates.

2. To recommend applicants for special certificates valid for a period not to exceed six years, upon such special studies as may be authorized by the Board of Education.

Revocation of certificates.

3. For immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, to recommend to the Board of Education the revocation of any certificates previously granted by the Board.

To recommend city certificates.

4. To recommend the granting of City certificates, and the renewal thereof, in the manner provided for the granting and renewal of County certificates by County Boards of Education in section seventeen hundred and seventy-five of the Political Code.

Mandate. Right to certificate. As to city boards of examination, see **Kerr's Cyc. Pol. Code,** §§ 1787-1794. When a teacher has a right to a certificate, the board has no discretion to refuse its issuance, and if it does refuse, it may be compelled by writ of mandate to issue it: Keller v. Hewitt, 109 Cal. 146; 41 Pac. Rep. 871.

CHAPTER V.

School Tax Levy.

Sec. 1. Annual estimate. Limit of aggregate amount.

Section 1. The Board of Education shall, on or before the first Monday of April in each year, report to the Supervisors an estimate of the amount which shall be required during the ensuing fiscal year for the purpose of meeting the current annual expenses of public instruction in the City and County, specifying the amount required for supplies to be furnished pupils, including text-books for indigent children; for purchasing and procuring sites; for leasing rooms or erecting buildings; for furnishing, fitting up, altering, enlarging and repairing buildings; for the support of schools organized since the last annual apportionment; for the salary of the School Directors, Superintendent, Deputy Superintendents, and all other persons employed in the School Department, and for other expenditures necessary for the administration of the Public School system; but the aggregate amount so reported for any one year shall not exceed the sum of thirty-two dollars and fifty cents for each pupil, who in the fiscal year immediately prior thereto actually attended the schools entitled to participate in the apportionment thereof.

Sec. 2. Common School Fund.

Sec. 2. The Supervisors at the time and in the manner of levying and collecting other city and county taxes shall levy and cause to be collected for the Common School Fund a tax which, added to the revenue derived from other sources, shall produce an amount of money which shall not exceed thirty-two dollars and fifty cents for each pupil in attendance during the preceding fiscal year, as ascertained and reported by the Board of Education.

References. As to county school tax, see **Kerr's Cyc. Pol. Code,** §§ 1817-1820; People v. Sargent, 44 Cal. 430.

School tax levy. In general. There is no power to impose school district taxes without a substantial compliance with the provisions of the statute: People v. Seale, 52 Cal. 71, 72; People v. Pratt, 59 Cal. 77. A school tax cannot be imposed by the legislature without leaving some discretion in regard to it to the local authorities: McCabe v. Carpenter, 102 Cal. 469, 471; 36 Pac. Rep. 836.

Sec. 3. Extraordinary expenditures.

Sec. 3. In case of extreme emergency or great calamity, such as disaster from fire, riot, earthquake or public enemy, the Board of Education may, with the approval of the Mayor and Supervisors, incur extraordinary expenditures in excess of the annual limit provided for in this Charter, for the repair and construction and furnishing of school houses in place of those so injured or destroyed. The Supervisors may, by ordinance, cause to be transferred to the Common School Fund, from moneys in any fund not otherwise appropriated, sufficient money to liquidate such expenditures, and provide for the same in the next tax levy of the City and County.

CHAPTER VI.

School Houses and Lots.

Sec. 1. New school houses; plans and estimates. Board of Public Works to construct. Completion of school houses.

Section 1. When any locality in the City and County is unprovided with sufficient school accommodations, the Board of Education may, by resolution, make a requisition upon the Board of Public Works for plans and specifications and estimates for a new school house, specifying the number of class rooms needed, the location of the proposed school house, the date on which it should be completed, the amount of money in the School Fund available for the purpose, and such other information as will enable the Board of Public Works to prepare the necessary plans, specifications and estimates of cost for such school house.

If such plans, specifications and estimates are approved by the Board of Education, they shall be indorsed "Approved," with the date of such approval, by the President and Secretary thereof, and returned to the Board of Public Works, which shall proceed without delay to have such school house constructed and completed in accordance therewith.

When such school house is completed, the Board of Public Works shall notify the Board of Education to examine the same, and if it has been built in accordance with the plans and specifications and within the estimated cost thereof, the Board of Education shall accept and take possession of it.

School houses and lots. In general. As to election for bonds for schoolhouse, see People v. School District, 102 Cal. 184; 36 Pac. Rep. 396. As to property reserved for school sites under the Van Ness Ordinance, see Board of Education v. Fowler, 19 Cal. 11; Board of Education v. Martin, 92 Cal. 209; 28 Pac. Rep. 799. A board of education has no authority to appropriate a square for high school purposes, nor has it any authority to authorize such appropriation: McCullough v. Board of Education, 51 Cal. 418, 419. Schoolhouse sites reserved by the city under the Van Ness Ordinance are public property, to which no title can be acquired by adverse possession: Board of Education v. Martin, 92 Cal. 209; 28 Pac. Rep. 799.

School houses and lots. Remedies against. Ejectment may be maintained by a board of education for a school-lot: Board of Education v. Donahue, 53 Cal. 190. A proceeding for a writ of mandate to compel a board of education to comply with the instructions of electors as to the location of a schoolhouse site may be maintained by a taxpayer of a school district, whose children attend the school of such district: Eby v. Board of School Trustees, 87 Cal. 166, 173, 175; 25 Pac. Rep. 240. A schoolhouse erected by a public school district is public property, and a mechanic's lien cannot be enforced against it: Mayrhofer v. Board of Education, 89 Cal. 110; 26 Pac. Rep. 646.

Sec. 2. Repairs by Board of Public Works.

Sec. 2. When any school house, building, fence or other property belonging to, or connected with, or under the control of, the Board of Education, needs repairing, altering or improving, the Board shall notify the Board of Public Works, specifying in general terms the work to be done. The Board of Public Works shall cause the same to be done forthwith, if the cost thereof shall not exceed two hundred and fifty dollars; otherwise the Board of Public Works shall submit plans, specifications and estimates of cost to the Board of Education for its approval, and if approved as provided in section one of this Chapter, the Board of Public Works shall cause the same to be done, and if done in accordance with the plans and specifications, and within such estimate, the same shall be accepted and shall be paid for out of the Common School Fund.

Construction of section. The power to determine what repairing shall be done to school buildings, and how it shall be done, remains, under this section, in the Board of Education, but, instead of letting out the work by direct contract, or undertaking the management thereof itself, the Board of Education is directed to call upon the Board of Public Works to submit plans and estimates, which, if satisfactory, the Board of Education may adopt, and order the work done; and, when completed, payment may be ordered to be made therefor out of the Common School Fund. The purpose of the section was manifestly to transfer from the Board of Education to the Board of Public Works the direction and superintendence of such mechanical work: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 365, 366. See In re Wetmore, 99 Cal. 146; 33 Pac. Rep. 769; **Kerr's Cyc. Pol. Code,** § 1617.

Sec. 3. Purchase of lots.

Sec. 3. When it is necessary to purchase a lot for the use of the School Department, the price paid for such lot shall not exceed the market value of adjacent property of equal size and similarly situated. Any school building hereafter constructed shall have a clear space of at least ten feet around the same.

CHAPTER VII.

Public Library and Reading Rooms.

Sec. 1. Board of twelve Trustees. How constituted. No compensation.

Section 1. The Public Library and Reading Rooms of the City and County shall be under the management of a Board of twelve Trustees, one of whom shall be the Mayor of the City and County, who shall be a member of the Board by virtue of his office. The Board of Trustees of said Library and Reading Rooms in office at the time this Charter shall take effect shall continue to constitute the Board of Trustees of said Public Library and Reading Rooms; and all vacancies therein shall be filled by said Board. None of said Trustees shall receive any compensation for his services.

Public libraries. Municipal charter. See People v. Howard, 94 Cal. 73; 29 Pac. Rep. 485, concerning the Free Public Library of Los Angeles.

Sec. 2. Library Fund. Amount of tax.

Sec. 2. The Supervisors shall, for the purpose of maintaining such Library and Reading Rooms and such branches thereof as the Board of Library Trustees may from time to time establish, and for purchasing books, journals and periodicals, and for purchasing or leasing real and personal property, and for constructing such buildings as may be necessary, annually levy a tax on all property in the City and County not exempt from taxation which shall not be less than one and one-half cents nor more than two and one-half cents upon each one hundred dollars assessed valuation of said property. The proceeds of said tax shall be credited to the Library Fund.

Sec. 3. Gifts and bequests to Library Fund.

Sec. 3. All revenue from such tax, together with all money or property derived by gift, devise, bequest or otherwise, for the purposes of the Library, shall be paid into the treasury and be designated as the Library Fund and be applied to the purposes herein authorized. If such payment into the treasury should be inconsistent with the conditions or terms of any such gift, devise or bequest, the Board shall provide for the safety and preservation of the same and the application thereof to the use of the Library and Reading Rooms, in accordance with the terms and conditions of such gift, devise or bequest.

Sec. 4. Title to vest in City and County.

Sec. 4. The title to all property, real and personal, now owned or hereafter acquired by purchase, gift, devise, bequest or otherwise, for the purpose of the Library and Reading Rooms, when not inconsistent with the terms of its acquisition, shall vest in the City and County, and in the name of the City and County may be sued for and defended by action at law or otherwise.

Sec. 5. Board to control all library property. Board of Trustees. Monthly meetings. Quorum. President. Librarian. Secretary.

Sec. 5. The Board shall take charge of the Public Library and Reading Rooms, and the branches thereof, and of all real and personal property thereunto belonging, or that may be acquired by loan, purchase, gift, devise or otherwise, when not inconsistent with the terms and conditions of the gift, devise or bequest. It shall meet for business purposes at least once a month, and at such other times as it may appoint in a place to be provided for the purpose. A majority of the Board shall constitute a quorum for the transaction of business. It shall elect one of its number President, who shall serve for one year and until his successor is elected, and shall elect a Librarian and Secretary and such assistants as may be necessary. The Secretary shall keep a full account of all property, money, receipts and expenditures and a record of all its proceedings.

Sec. 6. Powers of Board. (1) Rules and regulations. (2) To administer trusts. (3) To appoint and remove assistants. (4) To purchase books. (5) Payments from Library Fund. (6) To fix salaries; to equip buildings. (7) Branches.

Powers of Board.

Sec. 6. The Board, by a majority vote of all its members to be recorded in its minutes with the ayes and noes, shall have power:

Rules and regulations.

1. To make and enforce all rules, regulations and by-laws necessary for the administration, government and protection of the Library and Reading Rooms and branches thereof, and all property belonging thereto, or that may be loaned thereto.

To administer trusts.

2. To administer any trust declared or created for such Library and Reading Rooms and branches thereof, and provide memorial tablets and niches to perpetuate the memory of those persons who may make valuable donations thereto.

To appoint and remove assistants.

3. To define the powers and prescribe the duties of all officers; determine the number of and elect all necessary subordinate officers and assistants, and for good and sufficient cause to remove any officer or assistant.

To purchase books.

4. To purchase books, journals, publications and other personal property.

Payments from Library Fund.

5. To order the drawing and payment upon vouchers, certified by the President and Secretary, of money from the Library Fund for any liability or authorized expenditure.

To fix salaries; to equip buildings.

6. To fix the salaries of the Librarian and Secretary and their assistants; and, with the approval of the Supervisors, expressed by ordinance, to erect and equip such building or buildings, room or rooms, as may be necessary for the Library and Reading Rooms and branches thereof.

Branches.

7. To establish such branches of the Library and Reading Rooms as the growth of the City and County may from time to time demand.

Sec. 7. Supervisors may authorize use of real estate for library purposes.

Sec. 7. The Supervisors shall have power to appropriate and authorize the use, either in whole or in part, of any real estate belonging to the City and County, for the purpose of erecting and maintaining a building or buildings thereon to be used for the Library and Reading Rooms, or branches thereof, and may appropriate the whole or any portion of any public building belonging to the City and County for such use.

Reference. As to the acquisition of real property for library site, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 549.

Construction of section. This section refers only to real estate "belonging to the City and County," and does not apply to property in the legal status of the Lincoln School lot: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 714, 715.

ARTICLE VIII.

POLICE DEPARTMENT.

CHAPTER I.

Organization.

Sec. 1. Consists of what.

Section 1. The Police Department shall consist of a Board of Police Commissioners, a Chief of Police, a Police Force, and of such clerks and employees as shall be necessary to carry into effect the provisions of this Article.

Sec. 2. Term of members.

Sec. 2. All members of the Police Department shall hold office during good behavior, subject to the provisions hereinafter set forth relating to promotions, suspensions, dismissals and disratements.

Reference. As to Civil Service provisions, see Charter, post, art. XIII.

Sec. 3. Qualifications of members.

Sec. 3. No person shall become a member of the Department unless he shall be a citizen of the United States, of good character for honesty and sobriety, able to read and write the English language, and a resident of the City and County for at least five years next preceding his appointment. Every appointee to the Department shall not be less than twenty-one nor more than thirty-five years of age, must possess the physical qualifications required for recruits of the United States Army, and before his appointment must pass a satisfactory medical examination under such rules and regulations as may be prescribed by the Board of Police Commissioners. In making appointments of members of the Department, the Board shall never regard the political or religious preferences or affiliations of any candidate.

CHAPTER II.

Police Commissioners.

Sec. 1. Board of four Police Commissioners. To be appointed by Mayor. Salary.

Section 1. The Police Department shall be under the management of a Board of Police Commissioners consisting of four members who shall be appointed by the Mayor, and each of whom shall receive an annual salary of twelve hundred dollars. No person shall be appointed such Commissioner who shall not have been an elector of the City and County for at least five years next preceding his appointment.

Police Commissioners. See Heinlen v. Sullivan, 64 Cal. 378; 1 Pac. Rep. 158; People v. Hammond, 66 Cal. 654; 6 Pac. Rep. 741; People v. Gunst, 110 Cal. 447; 42 Pac. Rep. 963. That the office of Police Commissioner is not an elective one, see Staude v. Board of Election Commissioners, 61 Cal. 313; People v. Pond, 89 Cal. 141; 26 Pac. Rep. 648.

Sec. 2. Political affiliations. Term.

Sec. 2. The Board shall never be so constituted as to consist of more than two members of the same political party. The term of office of the Commissioners shall be four years. Those first appointed shall so classify themselves by lot that they shall respectively go out of office at the expiration of one, two, three and four years.

Sec. 3. Successors in office.

Sec. 3. The Commissioners shall be successors in office of the Police Commissioners holding office in the City and County at the time this Charter shall go into effect by virtue of appointment under any statute or law of this State.

Sec. 4. Organization. President. Secretary; salary. Meetings. Ayes and noes.

Sec. 4. The Police Commissioners shall organize by electing one of their number President, who shall hold such office for one year. The Board shall appoint a Secretary, who shall receive an annual salary of fifteen hundred dollars. The sessions of the Board shall be public, except that executive sessions may be held whenever deemed proper by the Board. The Board shall meet at least once a week in the rooms of the Police Department, or in case of public emergency at such place as the Board may select. The Secretary must keep minutes of its proceedings; and in every case where a power is exercised by the Board under this Article the ayes and noes thereon shall be entered therein.

CHAPTER III.

Powers of the Board.

Sec. 1. (1) To appoint and dismiss. (2) Rules and regulations. (3) Permits for sale of liquor; hearing of persons refused permits; revocation of permits. (4) Special police-officers. (5) Sale and disposition of unclaimed property. (6) Police Matrons. (7) Police Surgeon.

Section 1. The Board of Police Commissioners shall have power:

To appoint and dismiss.

1. To appoint, promote, suspend, disrate or dismiss any member of the Department in the manner hereinafter provided.

Reference. As to promotions, suspensions, dismissals, and disratements, see Charter, post, art. VIII, chap. VII, secs. 1-3.

Rules and regulations.

2. To prescribe rules and regulations for the government, discipline, equipment and uniform of the Department, and from time to time to alter or repeal the same, and to prescribe penalties for the violations of any of such rules and regulations. All such rules and regulations must be reasonable.

Vacations. See act of March 10, 1891, Stats. 1891, p. 47.

Acceptance of rewards. Whatever rewards Police Officers may accept from private parties with the consent of the Police Commission, they are not entitled to a reward offered by the Governor for the arrest of criminals: Lees v. Colgan, 120 Cal. 262; 52 Pac. Rep. 502.

Permits for sale of liquor; hearing of persons refused permits; revocation of permits.

3. To grant permits to any person desiring to engage in the sale of liquor in less quantity than one quart, and to grant permits to any person engaged in the business of selling liquor to be drunk on the premises, and to revoke any such permit when it shall appear to the Board that the business of the person to whom such permit was given is conducted in a disorderly or improper manner. Without such permit none of such persons shall engage in the business of selling liquor. If the Board refuse to grant such permit, or propose to revoke any permit that has been granted, the person who is refused such permit or whose permit it is proposed to revoke, shall be entitled to be heard before the Board in person, or through counsel, and to have, free of charge, all reasonable facilities at the hearing. Such permits shall not be granted for more than three months at one time, and they shall distinctly state the name of the person to whom the same is given, and the description of the premises where such business is to be carried on. Such permits shall at all times be subject to inspection by any member of the Department. Complaints to revoke permits granted by the Board must be in writing, signed by the person making the same and filed with the Secretary of the Board; and a copy thereof certified by the Secretary must be served upon the party complained against at least five days before the time set for the hearing of the complaint.

Liquor-license laws. Validity of. As to validity of laws requiring a license to sell liquor, see Ex parte McNalley, 73 Cal. 632; 15 Pac. Rep. 368; Matter of Guerrero, 69 Cal. 88; 10 Pac. Rep. 261; Ex parte Benninger, 64 Cal. 291; 30 Pac. Rep. 846.

Mob violence. Liability. The City and County cannot relieve itself of the legal liability which the law imposes for acts of mob violence, by requiring a bond from a saloon-keeper or property owner, as the law does not provide for such a bond: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 624.

Special police-officers.

4. At its discretion, upon the petition of any person, firm or corporation, to appoint, and at pleasure to remove, special

police officers. Such officers shall be subject to all the rules and regulations of the Board.

Sale and disposition of unclaimed property.

5. To provide for the care, restitution or sale at annual public auction of all unclaimed property that may come into the possession of the Property Clerk, and to direct the destruction of such property as shall consist of implements, weapons, property or any other article, matter or thing used in the commission of crime.

Police Matrons.

6. To appoint Police Matrons for the care of female prisoners and to provide rules and regulations for the government of the same.

Police Surgeon.

7. To appoint a Police Surgeon who shall receive an annual salary of fifteen hundred dollars.

Sec. 2. Special meetings.

Sec. 2. The President may convene the Board for special meetings. The Secretary of the Board shall be the official custodian of all records and official documents of the Board.

CHAPTER IV.

The Chief of Police.

Sec. 1. Term; salary. Powers and duties.

Section 1. The Chief of Police shall be appointed by the Board of Police Commissioners and hold office for the term of four years. He shall receive an annual salary of four thousand dollars. He shall have control, management and direction of all members of the Department in the lawful exercise of his functions, with full power to detail any of them to such public service as he may direct, and with like power to suspend temporarily any member of the Department. In all cases of such suspension, he shall immediately report the same to the Board with the reasons therefor in writing. He shall maintain and enforce law and rigid discipline so as to secure complete efficiency of the Department. He shall, subject to the directions and orders of the Commissioners, have control of such of the prisons of the City and County as are not by the general law under the control of the Sheriff.

Sec. 2. Suppression of riots.

Sec. 2. In the suppression of any riot, public tumult, disturbance of the public peace, or organized resistance against the laws or public authority, the Chief of Police shall, in the lawful exercise of his functions, have all the powers that are now or may be conferred on Sheriffs by the laws of the State.

References. As to sheriffs, see **Kerr's Cyc. Pol. Code,** §§ 4175-4193. As to power of sheriff or other officers to suppress riots, see **Kerr's Cyc. Penal Code,** § 727.

Sec. 3. Chief executive officer of the Department.

Sec. 3. The Chief of Police shall be the chief executive officer of the Department. He shall be chargeable with and responsible for the execution of all laws and ordinances and the rules and regulations of the Department. He shall see that the orders and process issued by the Police Court and such other orders and process as may be placed in his hands are promptly executed, and shall exercise such other powers connected with his office as may be provided for in the general rules and regulations of the Commissioners.

Sec. 4. Law books in office. Absence from office.

Sec. 4. The Chief of Police shall keep a public office in which he shall have the Statutes of this State and of the United States, and all necessary works on criminal law. In case of his temporary absence some competent member of the Department, by him designated for that purpose, shall be in attendance at all hours of the day and night; and in such case he shall make known to such member of the Department where he can be found.

Sec. 5. Bailiffs in Police Court. Appointees. Salaries.

Sec. 5. The Chief of Police shall detail one or more of the members of the Department to attend constantly on the Police Court and to execute its orders and process. He shall detail at his pleasure members of the Department to act as his Chief Clerk, Assistant Clerks, Prison Keepers and Property Clerk. Said Chief Clerk and said Property Clerk shall each receive an annual salary of twenty-four hundred dollars.

Sec. 6. Contingent fund. Total disbursements.

Sec. 6. The Chief of Police may from time to time disburse such sums for contingent expenses of the Department, as in his judgment shall be for the best interest of the City and County, to be paid out of the contingent fund allowed the Department. The aggregate of all such sums shall not in any one fiscal year exceed the sum of ten thousand dollars. Provision shall be made by the Supervisors for such contingent fund in the annual tax levy. The Commissioners shall allow and order paid out of such contingent fund as contingent expenses of the Police Department, upon orders signed by the Chief of Police, such amounts as may be required.

Sec. 7. Control over pawn-shops, peddlers, etc. Permits for pawnbrokers, peddlers, etc. Examination of premises.

Sec. 7. The Chief of Police shall possess powers of general police inspection, supervision and control, over all pawnbrokers, peddlers, junk-shop keepers, dealers in second-hand merchandise, auctioneers and intelligence office keepers. All persons engaged in said callings must first procure permits from the Commissioners. In the exercise of such power the Chief may by authority in writing from time to time empower members of the Police Department, when in search of property feloniously obtained or in search of suspected offenders, or in search of evidence to convict any person charged with crime, to examine the books and the premises of any such person. Any such member of the

Police Department, when thereunto empowered in writing by the Chief of Police, may examine property alleged to have been pawned, pledged, deposited, lost, strayed or stolen.

CHAPTER V.

Subordinate Officers.

Sec. 1. Captains, salary; Lieutenants, salary; Sergeants, salary; Corporals, salary.

Section 1. Subordinate officers of the Police Department shall consist of Captains, who shall each receive an annual salary of twenty-four hundred dollars; Lieutenants, who shall each receive an annual salary of sixteen hundred and eighty dollars; Sergeants, who shall each receive an annual salary of fifteen hundred dollars; and Corporals, who shall each receive an annual salary of fourteen hundred and four dollars.

Sec. 2. Captains' duties.

Sec. 2. There shall be one Captain for each one hundred police officers. The duties of Captains shall be defined by the rules and regulations of the Commissioners and by the orders of the Chief of Police.

Sec. 3. Lieutenants' duties.

Sec. 3. There shall be one Lieutenant for every fifty police officers. The duties of Lieutenants shall be defined by the rules and regulations of the Commissioners, by the orders of the Chief of Police, and by the orders of their respective Captains.

Sec. 4. Sergeants' duties.

Sec. 4. There shall be as many Sergeants as in the judgment of the Commissioners may be advisable, not to exceed one Sergeant for every ten police officers. The duties of Sergeants shall be defined by the rules and regulations of the Commissioners, the orders of the Chief of Police, and the orders of their respective Captains and Lieutenants.

Sec. 5. Corporals' duties.

Sec. 5. There shall be as many Corporals as in the judgment of the Commissioners may be advisable. The duties of Corporals shall be defined by the rules and regulations of the Commissioners, the orders of the Chief of Police, and the orders of their respective Captains, Lieutenants and Sergeants.

Sec. 6. Detectives. Captain; salary, duties. Sergeants; salary, duties.

Sec. 6. The Chief of Police may detail for detective duties such members of the Department as he may select, not to exceed twenty-five. He shall designate a Captain of Police to act as Captain over the officers so detailed who shall receive an annual salary of three thousand dollars. Such Captain shall rank as Captain of Detectives, and his duties shall be defined by the Commissioners and by the Chief of Police. The members so detailed shall be known and ranked as Detective Sergeants. Each of said Detective Sergeants shall receive an annual salary of eighteen hundred dollars. They may be removed at any time from such detail by the Chief of Police. Their duties shall be defined by the rules and regulations of the Commissioners, by the orders of the Chief of Police, and by the orders of the Captain of Detectives.

CHAPTER VI.

Police Officers.

Sec. 1. Policemen. Number. Salary.

Section 1. The Police Force of the City and County shall not exceed one Police Officer for each five hundred inhabitants thereof. Police Officers shall each receive an annual salary of twelve hundred and twenty-four dollars.

Police-officer. Appointment under special act. A special act of the legislature authorizing the appointment of extra policemen is forbidden by art. IV, sec. 25, of the Constitution. A police-officer is an officer of the State, and not of the municipality in which he exercises his office, and the power to create an office, not created by the Constitution, is a legislative power which cannot be delegated, though the legislature may vest the appointment of officers in such individual or officer or board as it may think proper; but it can neither create an office by special act, nor can it by special act vest the power to appoint an officer in any board whatever: Farrell v. Board of Trustees, 85 Cal. 408; 24 Pac. Rep. 868.

Sec. 2. Property of prisoners.

Sec. 2. Every Police Officer shall, upon the arrest of any person charged with the commission of crime, search the person of such offender, and take from him all property and weapons, and forthwith deliver the same to the prison-keeper, who must deliver the same to the Property Clerk, to be by him kept until other disposition be made thereof according to law.

Sec. 3. Ex officio health officers.

Sec. 3. Police Officers shall be Health Officers by virtue of their office.

CHAPTER VII.

Promotions, Suspensions, Dismissals and Disratements.

Sec. 1. Promotions.

Section 1. All promotions in the Department shall be from the next lower rank, seniority of service and meritorious public service being considered.

Civil Service appointee. Promotion of. A Civil Service appointee of the Police Force is not entitled to promotion to a higher rank during his probationary period: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 638.

Officer's severance of connection with Department. Rights. When an officer has severed his connection with the Department, he loses whatever rights he may have had therein, and when he comes into the service again, he comes as a new man, and upon no better footing than any other officer. To give him rank, under such circumstances, as Sergeant, would be equivalent to promotion without compliance with the Civil Service provisions of the Charter, which govern all promotions within the Police Department: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 603, 604.

Sec. 2. Violation of rules; penalties.

Sec. 2. Any member of the Department guilty of any offense, or violation of rules and regulations, shall be liable to be punished by reprimand, or by fine to be fixed by the Commissioners, or by dismissal from the Department; but no fine shall ever be imposed at any one time for any offense exceeding one month's salary.

Penalty of suspension. The Board of Police Commissioners has no power to impose the penalty of suspension upon a member of the force who has been found guilty upon charges preferred. The punishments designated in this section must be regarded as exclusive. All reference to suspensions is omitted, and there is no power in the Police Commissioners to impose any other punishments than those named in this section: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 618. See art. VIII, chap. I, sec. 2, and art. VIII, chap. III, sec. 1, subd. 2, of the Charter.

Penalty of disratement. It cannot be said that there is an absolute necessity that a Board of Police Commissioners should have the power of disratement; indeed, it is a matter of doubt whether the present Board has such power; and it seems that the former Board of Police Commissioners did not have the power to impose the penalty of disratement upon any officer: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 339, 342.

Sec. 3. Fair trial before dismissal or punishment.

Sec. 3. No member of the Department shall be subject to dismissal for any cause, or to punishment for any breach of duty or misconduct therein, except after a fair and impartial trial before the Commissioners upon a verified complaint filed with the Board setting forth specifically the acts complained of, and after such reasonable notice to him of the time and place of hearing as the Board may by rule prescribe. The accused shall be entitled upon such hearing to appear personally and by counsel: to have a public trial; and to secure and enforce free of expense to him the attendance of all witnesses necessary for his defense.

Dismissals are in hands of Police Commissioners. Here, in a chapter headed "Promotions, Suspensions, Dismissals and Disratements," is a section outlining minutely the details of the procedure governing dismissals and punishment for misconduct in the department, and therein the whole matter is left with the Police Commissioners. A comparison of this section with sec. 12, art. XIII, post, governing dismissals generally, shows how careful the Charter-makers were to hedge about the members of the Police Department, and to protect them against possible passion or prejudice of the Police Commissioners, by insuring them a public trial upon verified charges and the free attendance of witnesses and their defendants. All of these safeguards against injuries and hasty actions are not vouchsafed to other departments under Civil Service. To hold that the members of the Police Department are subject, in the matter of dismissals, to the Civil Service Commissioners, would be to deprive the members of the Department of these manifest advantages: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 570, 573.

Dismissal without approval of Civil Service Commissioners. The Police Commissioners have authority to dismiss members of the Police Department without the approval of the Civil Service Commissioners, inasmuch as the Charter provides a special and extraordinary method of governing dismissals within the Police Department, with which the Civil Service Commission has no concern: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 570, 574.

No removal without written charges, etc. A police officer cannot be removed by the Police Commissioners without written charges or trial and conviction: Smith v. Brown, 59 Cal. 672.

Officer may be removed without charges when. That a policeman appointed by the Board of Police Commissioners, having no term of office fixed by law, may be removed by the Board without charges, notice, or trial, see Farrell v. Board of Police Commissioners, 1 Cal. App. Rep. 5; 81 Pac. Rep. 674.

CHAPTER VIII.

Unclaimed and Stolen Property.

Sec. 1. Lost, stolen, or unclaimed property. Delivery to Property Clerk.

Section 1. All property or money taken under suspicion of having been stolen or feloniously obtained, the result of crime or constituting the proceeds of crime, and all property or money taken from intoxicated or insane persons, or other persons incapable of taking care of themselves, or property or money lost or abandoned that may in any way come into the possession or custody of any member of the Department, or of any Criminal Court or Judge of the City and County, shall be delivered to the Property Clerk, who shall enter in a Record Book, to be kept by him for that purpose, a full and explicit description of the same, together with the name of the person or persons from whom received, the names of any claimants thereto, the time of the seizure, and the final disposition thereof.

Sec. 2. Property of Innocent persons to be returned.

Sec. 2. When property or money taken from any person arrested, or otherwise under suspicion of having been feloniously obtained, or of being the proceeds of crime, is brought with the claimant thereof and the person arrested, before a Court for examination and adjudication, and the Court shall adjudge that the person arrested is innocent of the offense alleged, and that the property or money belongs to him, it shall order such property or money returned to the accused, and the Property Clerk shall thereupon deliver such property or money to him personally, but not to his attorney or agent. If upon such hearing the accused shall be held for trial or examination, such property or money shall remain in the custody of the Property Clerk until the discharge or conviction of the person accused.

Sec. 3. Unclaimed property to be sold when. Property of insane persons.

Sec. 3. All unclaimed property and money that has been in the custody of the Property Clerk for one year shall be sold at public auction, after having been five times advertised in the official newspaper; and the proceeds of such sale shall be paid into the treasury to the credit of the Police Relief and Pension Fund. In no case shall such property be sold or disposed of until the necessity for the use thereof as evidence has ceased. The proceeds of property taken from insane persons shall not become part of such Fund until after the expiration of three years from the time the same is paid into the treasury; but the Commissioners and the Chief of Police shall, during such period, make diligent inquiry to ascertain the person or persons to whom the same should by right be payable.

Sec. 4. Property as evidence in Court.

Sec. 4. If any property or money in the custody of the Property Clerk be required as evidence in any Court, it shall be delivered to any officer who shall present an order in writing to that effect from such Court, and the Clerks of such Court shall be responsible for the safe delivery of such property or money to the Property Clerk.

Sec. 5. Duty of Property Clerk.

Sec. 5. All valuables and money in the custody of the Property Clerk shall be deposited by him for safe keeping with the Treasurer in such manner and subject to such rules and regulations as may be prescribed by the Board.

CHAPTER IX.

Present Police Force.

Sec. 1. Constitution of the Force.

Section 1. All members of the present Police Force in good standing in the Department at the time this Charter goes into effect, and the Park Police, shall continue therein without Civil Service examination; but all new appointments and all promotions made after this Charter shall go into effect shall be subject to and governed by Article XIII of this Charter.

Members of Park Police. Credits. Members of the Park Police are not entitled to credits for service prior to becoming members of the regular Police Department: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 651, 653. See Charter, art. XIV, sec. 7.

Examination, when necessary. The Police Force, as it stood on January 8, 1900, became a part of the city government by virtue of membership at that time. Any addition to the Force, or promotions within it, made thereafter must be made after examination, and in accordance with the new plan presented by the Charter: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 323, 324.

Protection of Civil Service Article. The members of the Police Department who came in under the Charter are subjected to and protected by the provisions of article XIII of the Charter, where such provisions are not in conflict with the positive provisions of art. VIII, chap. VII, sec. 3: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 570, 574.

CHAPTER X.

Police Relief and Pension Fund.

Sec. 1. Pension Fund. Board of Trustees.

Section 1. In order to continue in force and make effectual pensions already existing in favor of the Police Force, a Fund is hereby created to be known and designated as the Police Relief and Pension Fund. The Board of Police Commissioners and its successors in office shall constitute a Board of Trustees of said Fund.

Police Relief and Pension Fund. See Pennie v. Reis, 80 Cal. 266; 22 Pac. Rep. 176; Clarke v. Reis, 87 Cal. 543; 25 Pac. Rep. 759; Clarke v. Police Life etc. Ins. Board, 127 Cal. 550; 59 Pac. Rep. 994.

Construction of statutes. For construction of the act of March 4, 1889, Stats. 1889, p. 57, concerning the running of the statute of limitations against the Police Pension Fund, see Nicols v. Police Pension Fund Commissioners, 1 Cal. App. Rep. 494; 82 Pac. Rep. 557.

The act of March 2, 1897, Stats. 1897, p. 52, as amended by the act of 1889, Stats. 1889, p. 56, providing for pensions to those whose service in the Police Department should extend in the aggregate to twenty years, has no application to one whose connection with the Department was at an end before the passage of the amending act. It simply provides that in the case of an officer, who is a member of the force, who is sixty years of age, and who has served twenty years in the aggregate, the Board may, in its discretion, retire him on half-pay or retain him in active service at full pay. It does not apply to a person over whom the Board has no power or authority whatever: Clarke v. Police Life etc. Ins. Board, 127 Cal. 550, 553; 59 Pac. Rep. 994.

Sec. 2. Qualifications requisite to pensioners. Monthly pension.

Sec. 2. The Board of Police Commissioners may, by a unanimous vote, retire and relieve from service any aged, infirm or disabled member of the Department who has arrived at the age of sixty-five years, and who, upon an examination by two regularly certificated practicing physicians appointed by the Commissioners for that purpose, may be ascertained to be by reason of such age, infirmity or other disability, unfit for the performance of his duties. Such retired member shall receive from the Police Relief and Pension Fund a monthly pension equal to one-half of the amount of the salary attached to the rank held by him three years prior to the date of his retirement. No such pension shall be paid unless such person has been an active member of the Department for twenty years continuously next preceding his retirement, and the same shall cease at his death.

Sec. 3. Physical disabilities. Annual pension.

Sec. 3. Any member of the Department who shall become physically disabled by reason of any bodily injury received in the performance of his duty, upon his filing with the Commissioners a verified petition setting forth the facts constituting such disability and the cause thereof, accompanied by a certificate signed by the Chief of Police, the Captain of the Company to which he belongs, and by two regularly certificated physicians of the City and County recommending his retirement upon a pension on account of such disability, may be retired from the Department upon an annual pension equal to one-half the amount of salary attached to the rank which he may have held three years prior to the date of such retirement, to be paid to him during his life and to cease at his death. In case his disability shall cease his pension shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement.

Power to grant pension. The Board of Police Pension Fund Commissioners has no power to grant a pension to any other than present members of the Department. One who was formerly a member of the Police Department, but is not a member thereof at the present time, cannot be given the benefit of the Pension Fund: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 599.

Sec. 4. Family of member killed in service. First — Monthly pension to widow. Second — Pension to orphan children. Third — Pension to parents.

Family of member killed in service.

Sec. 4. The Commissioners shall, out of the Police Relief and Pension Fund, provide for the family of any officer, member or employee of the Department who may be killed while in the performance of his duty, as follows:

Monthly pension to widow.

First—Should the decedent be married, his widow shall as long as she may remain unmarried be paid a monthly pension equal to one-half of the salary attached to the rank held by the decedent at the time of his death.

Pension to orphan children.

Second—Should the decedent leave no widow, but leave an orphan child or children under the age of sixteen years, such children shall collectively receive a pension equal to one-half the salary attached to the position held by their father at the time of his death, until the youngest attains the age of sixteen years.

Pension to parents.

Third—Should the decedent leave no widow and no orphan child or children, but leave a parent or parents depending solely upon him for support, such parents, so depending, shall collectively receive a pension equal to one-half the salary attached to the position held by the decedent at the time of his death, during such time as the Commissioners may unanimously determine its necessity.

Sec. 5. Forfeiture of pensions.

Sec. 5. Any person receiving a pension as aforesaid from the Police Relief and Pension Fund, who shall be convicted of felony, shall become dissipated, an habitual drunkard, or shall become a non-resident of this State, shall forfeit all right to said pension.

Sec. 6. Death after ten years' service.

Sec. 6. When any member of the Department shall, after ten years' service, die from natural causes, then his widow, and if there be no widow, then his children, or if there be no widow or children, then his mother if dependent upon him for support, shall be entitled to a sum equal to the amount retained by the Treasurer from the pay of such deceased member and paid into the Relief and Pension Fund; but the provisions of this section shall not apply to any member of the Department who shall have received any pension under the terms of this Chapter.

Construction of section. Widow is entitled to what amount. The Police Relief and Pension Fund had its birth at the time the present Charter went into effect; and the provisions of the Charter, as well as the duties of the officers created by it, are prospective. Hence, under this section, and art. VIII, chap. X, sec. 11, subd. 9, which requires the Treasurer to retain from the pay of each member of the Police Force two dollars a month for the benefit of such fund, the widow of a member of the Police Department, who has died from natural causes, is entitled to recover a sum equal only to the amount retained from his pay, for the benefit of the Pension Fund, after the Charter went into effect: Burke v. Board of Trustees, Ct. of App., 1st Dist., Aug. 15, 1906; 87 Pac. Rep. 421.

Sec. 7. Rules and regulations. Estimate of annual pensions.

Sec. 7. The Commissioners shall make rules and regulations to carry out the provisions of this Chapter and to enforce compliance therewith on the part of the members of the Department. It shall make up an estimate every year of the amount required to pay all demands on the Police Relief and Pension Fund for the succeeding fiscal year, and certify the same to the Supervisors in connection with and as a part of the annual appropriation for the Police Department.

Sec. 8. Rewards for heroic conduct.

Sec. 8. The Commissioners may, on notice to the Chief of Police, reward any member of the Department for conduct which is heroic or meritorious. The form or the amount of such reward shall be discretionary with the Board; but it shall not exceed in any one instance one month's salary.

Sec. 9. Commissioners to hold quarterly meetings; requisite of warrants. Record of proceedings; list of pensioners. Presentment of warrants.

Sec. 9. The Board of Police Pension Fund Commissioners shall hold quarterly meetings on the first Mondays of April, July, October and January of each year, and upon the call of its President. It shall issue warrants, signed by its President and Secretary, to the persons entitled thereto, for the amount of money ordered paid to such persons from the Relief and Pension Fund. Each warrant shall state for what purpose the payment is made.

The Board of Police Pension Fund Commissioners shall keep a public record of its proceedings. It shall at each quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payment from the Relief and Pension Fund, stating the amounts of such payments, and for what granted. Such list shall be certified and signed by the President and Secretary of the Board. The Auditor shall thereupon enter a copy of such list upon a book to be kept for that purpose which shall be known as The Police Relief and Pension Fund Book. All warrants signed by the President and Secretary of the Board shall be presented to the Auditor, and be audited and ordered paid by him out of said Fund.

Sec. 10. Powers of Board. Secretary. Pension Fund.

Sec. 10. The Board of Police Pension Fund Commissioners shall possess the powers vested in the Board of Police Commissioners to make rules and regulations for its guidance. It may appoint a Secretary, and provide for the payment from said Fund of all its necessary expenses, not exceeding fifty dollars for any one month, including the salary of the Secretary and printing. No compensation shall be paid to any member of the Board for any duty required or performed as Police Relief and Pension Fund Commissioner.

Vested right in Pension Fund not disturbed by Charter. Where a policeman has served for more than twenty years as an active patrol officer, and has attained the age of 62 years, and is placed, by the Board of Police Commissioners, upon the retired list of the Police Department and pensioned, but where he never resigned, and was never dismissed from said Department, he still remained a member of the Department, and where such officer died before the adoption of the Charter, his vested rights in the Pension Fund could not be affected by the subsequent adoption of the Charter, which revised the law governing pensions in the City and County: Kavanagh v. Police etc. Commissioners, 134 Cal. 50; 66 Pac. Rep. 36.

Sec. 11. Sources of revenue. (1) Percentage of liquor licenses. (2) Dog licenses. (3) Fines upon members. (4) Unclaimed property. (5) Part of other licenses. (6) Fines for weapons. (7) Violations of ordinances. (8) Rewards. (9) Retention from monthly salary.

Sources of revenue.

Sec. 11. The Supervisors shall annually, when the tax levy is made, direct the payment into the aforesaid Fund of the following moneys:

Percentage of liquor licenses.

1. Not less than five nor more than ten per centum of all moneys collected and received from licenses for the keeping of places where spirituous, malt or other intoxicating liquors are sold.

Dog licenses.

2. One-half of all moneys received from taxes or from licenses upon dogs.

Fines upon members.

3. All moneys received from fines imposed upon members of the Police Department for violation of law or the rules or regulations thereof.

Unclaimed property.

4. All proceeds of sales of unclaimed property.

Part of other licenses.

5. Not less than one-fourth nor more than one-half of all moneys received from licenses from pawnbrokers, billiard hall keepers, dealers in second-hand merchandise, and from junk stores.

Fines for weapons.

6. All moneys received from fines for carrying concealed weapons.

Violations of ordinances.

7. Twenty-five per centum of all fines collected in money for violation of any ordinance.

Rewards.

8. All rewards to members of the Police Department, except such as shall be excepted by the Commissioners.

Retention from monthly salary.

9. The Treasurer shall retain from the pay of each member of the Police Force two dollars a month, which

shall be forthwith paid into the Police Relief and Pension Fund. No other or further retention or reduction shall be made from such pay for any other fund or purpose unless the same is herein authorized.

Money of State. Not a contribution. The money retained under this subdivision is not a contribution to the Police Relief and Pension Fund, but is money of the State retained in its possession for the creation of this very fund: Burke v. Board of Trustees, Ct. of App., 1st Dist., Aug. 15, 1906; 87 Pac. Rep. 421. See note to sec. 6, ante, of this chapter.

Sec. 12. Policemen on special detail.

Sec. 12. When a request is made for regular policemen to be detailed at any place of amusement or entertainment, ball, party or picnic, the party or person making such request shall first deposit two dollars and fifty cents for each man so detailed with the Property Clerk of the Department, who shall give him a receipt for the same, and such sum shall be at once paid into the treasury to the credit of the Police Relief and Pension Fund.

Sec. 13. Auditor's report on Pension Fund. Surplus. Deficiency.

Sec. 13. On the last day of June of each year, or as soon thereafter as practicable, the Auditor shall make a report to the Supervisors of all moneys paid out of such Fund during the previous year, and of the amount then to the credit of such Fund. The surplus then remaining in such Fund exceeding the average annual amount paid out of such Fund during the three years next preceding shall be transferred to and become a part of the Surplus Fund, and shall be no longer under the control of the Board, or subject to its order. Payments provided for in this Chapter shall be made quarterly upon proper vouchers. When in any one year a deficiency shall exist in such Fund, such deficiency shall be provided for and made good by the Supervisors in their next ensuing tax levy.

Provision for deficiency in Pension Fund. A deficiency in the Pension Fund many constitutionally be provided for in the next ensuing tax levy: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 491.

ARTICLE IX.

FIRE DEPARTMENT.

CHAPTER I.

Organization and Powers.

Sec. 1. Board of four Commissioners. To be appointed by Mayor. Salary.

Section 1. The Fire Department shall be under the management of a Board of Fire Commissioners consisting of four members, who shall be appointed by the Mayor, and each of whom shall receive an annual salary of twelve hundred dollars. No person shall be appointed a Fire Commissioner who shall not have been an elector of the City and County for at least five years next preceding his appointment.

Liability for negligence. What boards are independent of each other. The Board of Fire Commissioners of the City and County of San Francisco is a department of the municipal government: People v. Wilshire, 96 Cal. 605, 607; 31 Pac. Rep. 564; but the City and County is not liable for acts of negligence committed by the members of its Fire Department while engaged in duties pertaining to such department: Howard v. San Francisco, 51 Cal. 52. The Board of Fire Commissioners is independent of the Board of Supervisors: People v. Newman, 96 Cal. 605; 31 Pac. Rep. 564.

Sec. 2. Political affiliations. Term.

Sec. 2. The Board shall never be so constituted as to consist of more than two members of the same political party. The term of office of the Commissioners shall be four years. Those first appointed shall so classify themselves by lot that they shall respectively go out of office at the expiration of one, two, three and four years.

Sec. 3. Successors in office.

Sec. 3. The Commissioners shall be successors in office of the Fire Commissioners holding office in the City and County at the time this Charter shall go into effect by virtue of appointment under any statute or law of this State.

Sec. 4. Organization. President; term. Secretary; salary. Meetings.

Sec. 4. The Commissioners shall organize by electing one of their number President who shall hold office for one year. The Board may appoint a Secretary who shall perform such duties as the Board may prescribe. He shall receive an annual salary of twenty-four hundred dollars. The Board shall meet at least one a week, and as often as the business of the Department may require, and all its meetings shall be public.

Secretary of Board. The Secretary to the Board, under the new Charter, is not the same office or place as the Clerk mentioned in the act of March 28, 1878; and it seems that it was the intention of the framers of the Charter that the appointment of the Secretary should be left to the discretion of the Board. This being so, the Board is not required to select the former Clerk as Secretary of the Board, nor to select a member of the Fire Department to that office: Maxwell v. Board of Fire Commissioners, 139 Cal. 229, 231; 72 Pac. Rep. 996.

Sec. 5. Powers of Board. Commissioners.

Sec. 5. The Board shall organize the Department, create and establish such fire companies as it may deem necessary, prescribe the number and duties of the officers, members and employees of the Department, and the uniforms and badges to be worn by them; have control of all the property and equipments of the Department, and exercise full power and authority over all appropriations made for the use of the Department.

Sec. 6. Qualifications of firemen.

Sec. 6. All persons appointed to positions in the Depart ment must be citizens of the United States, not less than twenty-one nor more than thirty-five years of age, of good character for honesty and sobriety, able to read and write the English language, residents of the City and County at least five years next preceding the date of their appointment, must pass a medical examination under such rules and regulations as may be prescribed by the Commissioners, and upon such examination be found in sound bodily health.

Qualifications required. The same qualifications are required of "all persons appointed to positions in the Department"; they must be citizens, not less than twenty-one years nor more than thirty-five years of age: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 355, 358.

Sec. 7. Political opinions to be disregarded. Trial before dismissal.

Sec. 7. No officer, member or employee of the Department shall be appointed, transferred, or removed because of his political opinions, nor shall he be transferred or dismissed except for cause, nor until after a trial before the Commissioners.

Construction of section. Resignations. This provision was intended to cover involuntary separation from the Department, not cases of voluntary resignation. The Board may easily regulate this matter by making a rule requiring all resignations to be in writing: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 526.

Sec. 8. Powers and duties of Commissioners. Fines.

Sec. 8. The Commissioners shall see that the officers, members and employees of the Department faithfully discharge their duties, and that the laws, ordinances and regulations pertaining to the Department are carried into effect. The Board shall make such rules and regulations as may be necessary to secure discipline and efficiency in the Department, and for any violation of such rules and regulations may impose reasonable fines upon the officers, members and employees of the Department, or may suspend any of them for such reasonable time as the Board may by rule prescribe. Such fines shall be deducted from the monthly warrants of the officers, members and employees upon whom they are imposed, and shall be transferred by the Treasurer to the Firemen's Relief and Pension Fund.

Rules. Vacations upon salary. Under the power granted to make all rules necessary to promote efficiency in the Fire Department, vacations may be permitted to members thereon upon salaries. To allow leave of absence to members of the Fire Department on salary does not contravene art. XVI, sec. 33, or art. IV, chap. II, sec. 6; and no portion of their salaries can be deducted for such periods of absence: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 261, 264.

Same. Art. IV, chap. II, sec. 6, not applicable. Whatever the significance of the Charter, sec. 6, chap. II, art. IV, is was manifestly not intended to apply to the Fire Department; and cannot affect a fireman, who has the rules of the Department as his "legal cause" for absence from "office": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 261, 264.

Sec. 9. Duties of Clerk and Commissary. Conflagration.

Sec. 9. The Clerk and Commissary of the Fire Department Corporation Yards shall not deliver any supplies or stores of the Fire Department except upon an order signed by the Chief Engineer and the Secretary of the Commissioners; but during a conflagration, such material or apparatus as may be required for the purpose of extinguishing such conflagration may be withdrawn from said Corporation Yards by order of the Chief Engineer, or by any officer in charge of the force of the Department at such conflagration.

Sec. 10. No other employment.

Sec. 10. No member or employee of the Fire Department shall be engaged in any other employment.

CHAPTER II.

Duties of the Commissioners.

Sec. 1. Reorganization of the Department. Commissioners; duties. Constitution of the Department. Present and future.

Section 1. The Board of Fire Commissioners shall immediately after their appointment and qualification proceed to reorganize the Fire Department in conformity with the provisions of this Charter. In so doing the Board shall make its appointments of officers and members from the persons constituting the force in the service of the Fire Department at the time this Charter goes into effect. Such officers and members shall not be required to pass any Civil Service examination. All future appointments and promotions shall be made subject to the provisions of Article XIII of this Charter. If any reduction is made in the force of the Department, the Commissioners may temporarily discharge those persons, whose discharge shall be most conducive to the efficient reorganization of the Department, but in case of a subsequent increase of the force, those temporarily discharged shall be reappointed without Civil Service examination and assigned to the same rank in which they were at the time of their discharge.

Spirit of Charter. The animating spirit of the whole Charter was to remove from partisan struggle the minor places in the municipal government, so far as possible, and to secure to employees permanency of tenure: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 355, 358.

Who exempt from Civil Service examination. Employees, mechanics, and others in the Corporation Yard were members of the Fire Department when the Board of Fire Commissioners assumed control of the Fire Department, and were entitled to retain their positions without Civil Service examinations, as part of the "Force in the Service of the Department": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 355, 358.

Right to salary after "lay-off." When a member of the regular Fire Department "lays off," and a temporary appointee is assigned to perform his duties, such temporary appointee is entitled to the salary which he would receive were he at such time appointed to full membership in the Department: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 656, 658.

Sec. 2. Fair public trial before dismissal.

Sec. 2. No officer, member or employee of the Department shall be dismissed or transferred except for cause nor until after a trial. The accused shall be furnished with a written copy of the charges against him at least three days previous to the day of trial. He shall have the right to appear in person and by counsel and examine witnesses in his behalf. All witnesses shall be examined under oath, and all trials shall be public.

Dismissal of employees. Throughout the article dealing with the Fire Department, the same protection and safeguards are thrown around employees as around officers and members. They cannot be dismissed or transferred, except for cause and after trial: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 355, 357.

Sec. 3. Salary during disability.

Sec. 3. When any officer, member or employee of the Department shall become temporarily disabled by reason of injuries received while in the actual performance of his duty therein so as to incapacitate him from performing his duty, the Commissioners shall allow his salary during the continuance of such temporary disability.

Salary during temporary disability. As to the conditions in general under which members of the Fire Department may receive salaries during temporary disability, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 621.

Employees of the Fire Department, as well as officers and members, are equally entitled to salary during disability by reason of injury received in the performance of duty: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 355, 357.

Sec. 4. Performance of contracts. Supplies; rules governing contracts and proposals.

Sec. 4. The Commissioners shall see that all contracts awarded and work done for the Department are faithfully performed, and shall, upon the awarding of any such contract, exact an adequate bond for the prompt and faithful performance of the same.

The provisions of Article II, Chapter III, of this Charter in regard to the advertising for proposals, the affidavit and security accompanying the same, the presentation and opening of proposals, the awarding of contracts and the security for the performance thereof, shall, so far as the same can be made applicable, apply to all proposals and contracts made, awarded or entered into for furnishing supplies to the Fire Department. Any contract made in violation of any of the provisions of this Chapter shall be void.

Contracts for supplies. Comparison and construction of sections. By a comparison of art. II, chap. III, secs. 1 and 5; art IX, chap. II, sec. 4; art. II, chap. III; and art. IX, chap. I, sec. 5, it seems that it was the evident intent of the Charter-framers to empower the Board of Fire Commissioners to make all contracts for supplies furnished to and work done for the Fire Department under the regulations imposed by art. II, chap. III. This being the case, the Fire Department is a department "otherwise specifically provided for" under sec. 1, chap. III, of art. II: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 151, 152.

Contract for horseshoeing. The Fire Department may contract for horseshoeing: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 244.

What obligations must be met. Obligations incurred by the Board of Fire Commissioners under the Consolidation Act had to be recognized and met by its successors under the Charter: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 185.

CHAPTER III.

The Chief Engineer.

Sec. 1. Duties of Chief Engineer. Assistants; duties.

Section 1. The Board of Fire Commissioners shall appoint a Chief Engineer, who shall be charged with the special duty of superintending the extinguishment of fires. The Chief Engineer shall be the chief executive officer of the Fire Department, and it shall be his duty and that of the Assistant Chief Engineers and of the Battalion Chiefs to see that all laws, orders, rules and regulations in force in the City and County, or made by the Commissioners, concerning the Fire Department, are enforced.

Term of Chief of Fire Department. Where the term of office of the Chief of the Fire Department is not fixed by the Constitution, nor declared by law, his term continues only during the pleasure of the appointing power: Higgins v. Cole, 100 Cal. 260, 264; 34 Pac. Rep. 678.

Sec. 2. Powers and duties of Chief Engineer.

Sec. 2. The Chief Engineer may suspend any subordinate officer, member, or employee of the Department for incompetency, or for any violation of the rules and regulations of the Fire Department, and shall forthwith report in writing such suspension, with his reasons therefor, to the Commissioners for their action. He shall diligently observe the condition of the apparatus and workings of the Department and report in writing thereon at least once a month to the Board and make such recommendations and suggestions respecting the same as he may deem proper. In the absence or inability of the Chief Engineer, an Assistant Chief Engineer shall perform his duties.

Suspension. Power of Chief Engineer. The Chief Engineer has power to suspend all alike, for certain causes, incompetency, violation of rules, etc.: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 355, 357.

Sec. 3. Destruction of buildings.

Sec. 3. The Chief Engineer, or, in his absence, the Assistant Chief Engineers, or, in their absence, any Battalion Chief in charge may, during a conflagration, cause to be cut down or otherwise removed any buildings or structures for the purpose of checking the progress of such conflagration.

CHAPTER IV.

Fire Companies.

Sec. 1. Fire Engine Company composed of what. Hook and Ladder Company composed of what. Chemical Engine Company composed of what. Water Tower Company composed of what. Fire Boat Company composed of what.

Section 1. Each Steam Fire Engine Company shall be composed of not more than one Captain, one Lieutenant, one Engineer, one Driver, one Stoker, and five Hosemen.

Each Hook and Ladder Company shall be composed of not more than one Captain, one Lieutenant, one Driver, one Tillerman and eight Truckmen.

Each Chemical Engine Company shall be composed of not more than one Captain, one Lieutenant, one Driver and one Hoseman.

Each Water Tower Company shall be composed of not more than one Captain, one Driver and one Hoseman.

Each Fire Boat Company shall be composed of not more than one Captain, one Lieutenant, one Engineer, one Assistant Engineer, two Firemen, one Pilot and twelve Hosemen.

CHAPTER V.

Fire Marshal.

Sec. 1. Fire Marshal. Assistant. Deputies. Salaries; paid by whom.

Section 1. The Board of Fire Commissioners, on the written recommendation of the Board of Directors of the corporation known as the Underwriters' Fire Patrol of San Francisco, may appoint such persons as may be recommended by said Board of Directors as Fire Marshal and

Assistant Fire Marshal. Vacancies occurring in the office of Fire Marshal or Assistant Fire Marshal shall be filled in the same manner. The salaries of said Fire Marshal and of his assistant and deputies shall be fixed and paid by said Board of Directors of said Underwriters' Fire Patrol of San Francisco, and in no event shall the City and County be liable therefor or for any part thereof.

Sec. 2. Duties.

Sec. 2. The Fire Marshal or, in case of his disability, the Assistant Fire Marshal shall attend all fires which may occur in the City and County, and he shall take charge of and protect all property which may be imperiled thereby.

Sec. 3. Powers. Protecting property.

Sec. 3. The Fire Marshal may call upon policemen during the time of any fire for the purpose of protecting property until the arrival of the owner or claimant thereof, and in case the owner or claimant of such property does not take charge of the same within twenty-four hours the Fire Marshal may have such property stored at the owner's or claimant's expense.

Sec. 4. Powers and duties of Fire Marshal. Combustibles. Causes of fires. Unclaimed property.

Sec. 4. The Fire Marshal shall be charged with the enforcement of all laws and ordinances relating to the storage, sale and use of oils, combustible materials and explosives, together with the investigation of the cause of all fires. In all cases where there is reason to believe that fires are the result of crime or that crime has been committed in connection therewith, the Fire Marshal must report the same in writing to the District Attorney. The Fire Marshal shall also have the care of, and may sell, subject to the orders of the Board of Fire Commissioners, all property saved from fire for which no owner can be found, and at once pay the amount realized from any such sale into the treasury. He shall exercise the functions of a police officer.

Sec. 5. Deputies for inspection of buildings; not paid by city.

Sec. 5. The Fire Marshal shall have power to appoint deputies for inspecting buildings, but such deputies shall receive no compensation for their services from the City and County.

CHAPTER VI.

Fire Wardens.

Sec. 1. Who constitute. Safety of buildings.

Section 1. The Chief Engineer, Assistant Chief Engineers, Battalion Chiefs and the Fire Marshal shall constitute a Board of Fire Wardens, with power to inspect and report to the Board of Public Works as to the safety of buildings and other structures within the City and County.

"Fire-trap" theater cases. Where ordinances respecting the building of theaters in such manner as to protect theater-goers in case of fire, are valid, one who has, in building a theater, violated such ordinances, cannot complain, in a court of equity, against the manner adopted by the police authorities in permanently closing such theaters: Opinion of Judge Murasky of the Superior Court, July 13, 1907.

CHAPTER VII.

Firemen's Relief Fund.

Sec. 1. Creation of Fund. Board of Trustees.

Section 1. In order to continue in force and make effectual pensions already existing in favor of firemen, a fund is hereby created to be known and designated as the Firemen's Relief Fund. The Board of Fire Commissioners of the City and County and its successors in office shall constitute a Board of Trustees of said Fund. The Board shall be known as the Board of Fire Pension Fund Commissioners.

Firemen's Relief Fund. See San Francisco v. Liverpool etc. Ins. Co., 74 Cal. 113; 15 Pac. Rep. 380. As to Police Relief Fund, see Charter, ante, art. VIII, chap. X.

Sec. 2. Tax for Relief Fund.

Sec. 2. There shall be annually levied, collected and apportioned to the Firemen's Relief Fund a tax sufficient to meet and pay all demands upon said Fund, for the purposes set out in this Chapter.

Sec. 3. Qualifications requisite to pensioners. Monthly pension.

Sec. 3. The Commissioners may, by a unanimous vote, retire and relieve from service any aged, infirm or disabled fireman of the Department who has arrived at the age of sixty-five years, and who, upon an examination by two regularly certificated practicing physicians appointed by the Commissioners for that purpose, may be ascertained to be by reason of such age, infirmity or other disability, unfit for the performance of his duties. Such retired fireman shall receive from the Firemen's Relief Fund a monthly pension equal to one-half of the amount of the salary attached to the rank held by him three years prior to the date of his retirement. No such pension shall be paid unless such person has been an active member of the Fire Department for twenty years continuously next preceding his retirement, and the same shall cease at his death.

Sec. 4. Retirement for physical disabilities. Annual pension. Restoration to rank when disability ceases.

Sec. 4. Any member of the Fire Department who shall become physically disabled by reason of any bodily injury received in the performance of his duty, upon his filing with the Commissioners a verified petition setting forth the facts constituting such disability and the cause thereof, accompanied by a certificate signed by the Chief of the Fire Department, the Captain of the Company to which he belongs, and by two regularly certificated physicians of the City and County, recommending his retirement upon a pension on account of such disability, may be retired from the Department upon an annual pension equal to one-half the amount of salary attached to the rank which he may have held three years prior to the date of such retirement, to be paid to him during his life and to cease at his death. In case his disability shall cease his pension shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement.

Construction of section. Amount of pension. The language of this section makes the amount of the pension depend upon the rank, and not upon the salary attached thereto. Hence, if a member of the Fire Department occupied the same rank three years prior to the taking effect of the Charter that he did afterwards, he is entitled to a pension amounting to one half of the salary attached to his rank under the Charter: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 336, 337.

Same. Object of Charter-framers. The object of the Charter-framers in making the amount of the pension depend upon the rank which the member may have held at a date three years prior to his retirement was to protect the Pension Fund from the payment of exorbitant pensions by the raising of a member in rank just prior to his retirement. It was not the intention to make three years' service a condition precedent to the obtaining of a pension for disability in the service: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 336, 337.

Who are entitled to pensions. Employees as well as officers and members of the Fire Department are entitled to certain pensions: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 355, 357.

What disability justifies pension. As to nature of disability which must be suffered by members of the Fire Department to justify the granting of a pension under Charter provisions, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 404.

Sec. 5. Provision for family of member killed. First — Monthly pension to widow. Second — Pension to orphan children. Third — Pension to parents.

Provision for family of member killed.

Sec. 5. The Commissioners shall, out of the Firemen's Relief Fund, provide as follows for the family of any officer, member, or employee of the Fire Department who may be killed while in the performance of his duty:

Monthly pension to widow.

First—Should the decedent be married, his widow shall as long as she may remain unmarried be paid a monthly pension equal to one-half of the salary attached to the rank held by the decedent at the time of his death.

Pension to orphan children.

Second—Should the decedent leave no widow, but leave an orphan child or children under the age of sixteen years, such children shall collectively receive a pension equal to one-half the salary attached to the position held by their father at the time of his death, until the youngest attains the age of sixteen years.

Pension to parents.

Third—Should the decedent leave no widow and no orphan child or children, but leave a parent or parents depending solely upon him for support, such parents, so depending, shall collectively receive a pension equal to one-half the salary attached to the position held by the decedent at the time of his death during such time as the Commissioners may unanimously determine its necessity.

Sec. 6. Forfeiture of pensions.

Sec. 6. Any person receiving a pension from the Firemen's Relief Fund, who shall be convicted of felony, or who shall become dissipated, an habitual drunkard, or who shall become a non-resident of this State, shall forfeit all right to said pension.

Sec. 7. Rules and regulations. Estimate of annual pensions.

Sec. 7. The Commissioners shall make rules and regulations to carry out the provisions of this Chapter and to enforce compliance therewith on the part of the members of the Department. It shall make up an estimate every year of the amount required to pay all demands on the Firemen's Relief Fund for the succeeding fiscal year, and certify the same to the Supervisors in connection with and as a part of the annual appropriation for the Fire Department.

Sec. 8. Quarterly meetings of Commissioners. Warrants must state what. Record of proceedings. List of pensioners. Warrants, how paid.

Sec. 8. The Board of Fire Pension Fund Commissioners shall hold quarterly meetings on the first Mondays of April, July, October, and January of each year, and upon the call of its President. It shall issue warrants, signed by its President and Secretary, to the persons entitled thereto, for the amount of money ordered paid to such persons from the

Firemen's Relief Fund. Each warrant shall state for what purpose the payment is made.

The Board of Fire Pension Fund Commissioners shall keep a public record of its proceedings. It shall at each quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payment from the Relief Fund, stating the amounts of such payments and for what granted. Such list shall be certified and signed by the President and Secretary of the Board. The Auditor shall thereupon enter a copy of such list upon a book to be kept for that purpose which shall be known as the Firemen's Relief Fund Book. All warrants signed by the President and Secretary of the Board shall be presented to the Auditor, and be audited and ordered paid by him out of said Fund.

Sec. 9. Powers of Board. Secretary. Expenses.

Sec. 9. The Board of Fire Pension Fund Commissioners shall possess the powers vested in the Board of Fire Commissioners to make rules and regulations for its guidance. It may appoint a Secretary and provide for the payment from said Fund of all its necessary expenses, not exceeding fifty dollars for any one month, including the salary of the Secretary and printing; but no compensation shall be paid to any member of the Board for any duty required or performed as Fire Pension Fund Commissioner.

CHAPTER VIII.

Salaries.

Sec. 1. Chief Engineer; First Assistant; Second Assistant. Battalion Chiefs. Superintendent of Engines. Clerk and Commissary of Corporation Yards. Captains. Lieutenants. Engineers. Drivers, Stokers, Tillermen, Truckmen, Hosemen, Stewards. Hydrantmen. Superintendent of Horses. Draymen. Hostlers. Watchmen. Fire Boat Pilots, Engineers and Assistants, and Firemen.

Section 1. The officers and members of the Fire Department shall receive annual salaries as follows:

Chief Engineer, four thousand dollars; First Assistant Chief Engineer, three thousand dollars; Second Assistant Engineer, twenty-four hundred dollars; Battalion Chiefs, each twenty-one hundred dollars; Superintendent of Engines, eighteen hundred dollars; the Clerk and Commissary of the Corporation Yards, fifteen hundred dollars; Captains, each fourteen hundred and forty dollars; Lieutenants, each twelve hundred dollars; Engineers, each thirteen hundred and fifty dollars; Drivers, Stokers, Tillermen, Truckmen, Hosemen, and Stewards, for the first year of service, each nine hundred and sixty dollars; for the second year of service, each ten hundred and eighty dollars; and for the third year of service and thereafter each twelve hundred dollars; Hydrantmen, each ten hundred and eighty dollars; Superintendent of horses, twelve hundred dollars; Draymen, each nine hundred dollars; Hostlers, each seven hundred and twenty dollars; Watchmen, each nine hundred dollars; Pilots of Fire Boats, each twelve hundred dollars; Engineers of Fire Boats, each fifteen hundred dollars; Assistant Engineers of Fire Boats, each fourteen hundred and forty dollars; Firemen of Fire Boats, each nine hundred dollars.

CHAPTER IX.

Department of Electricity.

Sec. 1. Creation of department.

Section 1. There is hereby created a Department of Electricity, which shall have charge of the construction and maintenance of the Fire Alarm and Police Telegraph and Telephone Systems, and shall be under the control of a joint Commission composed of the Board of Fire Commissioners and the Board of Police Commissioners.

Sec. 2. Electrician. Duties. Salary.

Sec. 2. There shall be appointed by the Board of Fire Commissioners and Board of Police Commissioners, acting in joint session, a practical and skilled electrician, who shall be called the Chief of the Department of Electricity, and who shall have general supervision of the Department of Electricity. He shall receive an annual salary of twenty-four hundred dollars.

Power to require bond from Chief of Department of Electricity. The position of Chief of the Department of Electricity is created by this section, but this chapter contains no provision requiring a bond from that official. Nor does article XV of the Charter, which treats of bonds of officials, make any specific provision requiring such bond. But, unders secs. 1 and 6, art. XV, the Charter probably ought to be construed as giving the commission which controls the Department of Electricity power to require a bond from the chief of said department and to fix the amount thereof. Where the Charter does not require bonds to be given by deputies, assistants, clerks or employees, and no provision of the general law and no ordinance requires such bonds, the power of fixing the amount of the bond is probably given to the board or officer employing such persons: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 168, 170.

Sec. 3. Assistants. Salaries.

Sec. 3. The Joint Commission may appoint such assistants as may be necessary to keep the electric and telephone systems in working order; but of those assistants appointed, no operator or inspector shall receive more than twelve hundred dollars a year, and no repairer, lineman, batteryman or instrument-maker shall receive a salary of more than ten hundred and eighty dollars a year.

Sec. 4. Jurisdiction.

Sec. 4. The Fire Department and the Police Department shall each have sole control over its own systems and wires.

Sec. 5. Citizens may connect with system.

Sec. 5. Any citizen, firm or corporation may, for the purpose of police or fire protection, be connected with the Police or Fire Signal System, or Telephone or Telegraph System, upon making fair payment for the connection and use of the same. Such rates of payment shall be fixed by ordinance of the Supervisors; but no connection shall be made so as to interfere with the use of the main line.

Sec. 6. To supervise electrical wires and appliances.

Sec. 6. The Department of Electricity is also charged with the duty of enforcing all the rules, regulations, orders and requirements made by ordinance of the Supervisors in regard to the inspection and supervision of electrical wires and appliances, and the currents for furnishing light, heat or power in and upon streets and buildings in the City and County.

ARTICLE X.

DEPARTMENT OF PUBLIC HEALTH.

Sec. 1. Board of Health. Seven members; five to be appointed by Mayor; two ex officio. No compensation.

Section 1. There shall be a Department of Public Health under the management of a Board of Health. The Board shall consist of seven members, five of whom shall be appointed by the Mayor, and who shall be regularly certificated physicians of the City and County at the time of their appointment, and who must have been such for at least five years next preceding their appointment. The Chief of Police and the President of the Board of Public Works shall be members of the Board by virtue of their office.

The members of the Board shall serve without compensation. They shall elect one of their number President, and adopt such rules and regulations as may be necessary for the government of the Board.

Reference. See People v. Perry, 79 Cal. 105, 111; 21 Pac. Rep. 423.

Superseding of State Board. At noon on January 8, 1900, the Board of Health appointed by the Mayor by virtue of the power vested in him by the Charter superseded, in all matters set forth in article X of said Charter, the Board of Health appointed by the Governor: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 128, 130. See People v. Williamson, 135 Cal. 415; 67 Pac. Rep. 504; Charter, post, art. XI, chap. II, sec. 2. The management of hospitals and almshouses is a "municipal" matter; hence, the State Board of Health is no longer in authority, and has not control of the almshouse: Weaver v. Reddy, 135 Cal. 430, 431; 67 Pac. Rep. 683. The Board of Health possesses such powers as the Charter confers, and the State law, so far as inconsistent with such powers, is superseded. It is doubtful whether § 3028 of **Kerr's Cyc. Pol. Code** is still in force and effect in San Francisco, and if so, whether it still affords a rule of conduct for the Charter Board of Health: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 626, 629; People v. Williamson, 135 Cal. 415; 67 Pac. Rep. 504.

Sec. 2. Terms.

Sec. 2. The appointive members of the Board shall hold office for four years. Those first appointed under this Charter shall so classify themselves by lot that one of them shall go out of office at the end of one year, one at the end of two years, one at the end of three years, and two at the end of four years.

References. As to terms of members of the Board of Health, see People v. Perry, 79 Cal. 105; 21 Pac. Rep. 423. As to filing oath of members of the Board of Health, see People v. Perry, 79 Cal. 105; 21 Pac. Rep. 423.

Sec. 3. Powers and duties of Board; public institutions; nuisances. Sanitary supervision. Expenditures.

Sec. 3. The Board shall have the management and control of the City and County Hospitals, Almshouses, Ambulance Service, Municipal Hospitals, Receiving Hospitals, and of all matters pertaining to the preservation, promotion and protection of the lives and health of the inhabitants of the City and County; and it may determine the nature and character of nuisances and provide for their abatement.

It shall have the sanitary supervision of the municipal institutions of the City and County, including jails, schoolhouses and all public buildings; of the disposition of the dead; of the disposition of garbage, offal and other offensive substances.

Except as provided in Article II, Chapter III, of this Charter, it shall have exclusive control and disposition of all expenditures necessary in the institutions under its immediate control.

Reference. As to the method by which the municipality may proceed to abate nuisances through the Board of Health, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 626, 629.

Abatement of nuisances. As to authority to determine the nature and character of nuisances and to provide for their abatement, see Charter, ante, art. II, chap. II, sec. 1, subds. 1, 6; **Kerr's Cyc. Pol. Code,** § 3028; and sec. 4, infra, of this article. As to the power to establish and maintain hospitals, etc., see Charter, ante, art. II, chap. II, sec. 1, subd. 11.

Under this section and the following one, and under subds. 1 and 6 of sec. 1, chap. II, art. II, of the Charter, and under section 4, post, the Board of Supervisors and the Board of Health have power to provide for the summary abatement of nuisances, and to ordain, make, and enforce all necessary sanitary laws and regulations for that purpose: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 626, 628.

In providing for the abatement of nuisances, a general ordinance should be passed, defining the conditions under which a nuisance may be known to exist, and directing the Board of Health, upon the determination that such conditions exist, to proceed, upon proper notice, to abate the same: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 626, 629.

Permits. Temporary deposit of dead bodies. The Board of Health has power to grant permits for the temporary deposit of dead bodies in the receiving-vaults of a cemetery: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 598.

Removal of quarantine by State Board of Health. There seems to be no law of this State authorizing the State Board of Health to cause the removal of a quarantine established by the Board of Health of the City and County of San Francisco: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 552.

Expenditures. Control of. The Health Department has "exclusive control and disposition of all expenditures necessary in the institutions under its immediate control," excepting as to supplies furnished under contract, which latter are to be provided by such Board in the manner laid down in the Charter, ante, art. II, chap. III; but such exclusive power so given was only intended to operate within the specific appropriation for each particular department: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 175.

Same. Limitation on. The Charter provisions very clearly aim at creating appropriations which shall be sacred to the separate departments of the government for which they are made. Sec. 6, chap. I, art III, limits the possible expenditures to the respective appropriations made in the budget: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 175, 176.

Same. Power of Board to appoint employees. Expenditures in the Health Department are limited by the appropriation made in the budget; but the Board of Health has power to appoint all necessary employees, subject to the restrictions of art. III, chap. I, sec. 7, and to the provisions of the article on Civil Service. If demands upon the treasury, originating in the Health Department, exceed the appropriation provided in the budget, or in other respects are unlawful, the Board of Health is justified in withholding its approval. The special provision governing the various departments prior to June 30, 1900, are found in sec. 37, art. XVI, of the Charter: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 175, 177. See sec. 13, chap. III, art. III.

Approval of demands. Control by Supervisors. Where the Board of Health has ordered supplies otherwise than as the law allows, the approval of such demands cannot be required of the Board of Supervisors as a ministerial act. Within the powers granted to the Board of Health as to the exclusive control and management of its funds, with the exception noted, the Board of Supervisors cannot control the expenditures of the Board of Health, but when such Board passes beyond its granted powers, the Board of Supervisors may withhold its approval of the illegally created demand: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 625, 626.

If the Board of Health presents a demand to the Board of Supervisors for an expenditure such as car-fare, necessary in the conduct of institutions under the care of the Board of Health, such expenditure is not subject to the control of the Board of Supervisors: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 409.

Sec. 4. To enforce ordinances of Supervisors. Recommendations to Supervisors.

Sec. 4. The Board shall enforce all ordinances, rules and regulations which may be adopted by the Supervisors for the carrying out and enforcement of a good sanitary condition in the City and County; for the protection of the public health; for determining the nature and character of nuisances and for their abatement; and for securing the proper registration of births, deaths and other statistical information. It shall from time to time submit to the Supervisors a draft of such ordinances, rules and regulations as it may deem necessary to promote the objects mentioned in this section.

References. As to sanitary ordinances, see Charter, ante, art. II, chap. II, sec. 1, subds. 1, 6. As to registration of births, etc., see **Kerr's Cyc. Pol. Code,** §§ 3023-3025. As to abatement of nuisances, see **Kerr's Cyc. Pol. Code,** § 3028, and sec. 3, supra, of this chapter.

Sec. 5. Appointees; salaries; duties. Government.

Sec. 5. The Board may appoint such officers, agents and employees as may be necessary for the proper and efficient carrying out and enforcement of the purposes and duties of the Board, and may fix their salaries and prescribe their duties. All appointments in the Department shall be made under the provisions of Article XIII of this Charter, and no person so appointed by the Board shall be removed without cause.

Reference. As to appointment of certain officers and employees by the Board of Health, see **Kerr's Cyc. Pol. Code,** §§ 3009, 3010.

Salary of Health Officer. How fixed. The salary of the Health Officer is fixed by the Board of Health, under their power to appoint such officers, agents, and employees as may be necessary, and fix their salaries: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 343.

Sec. 6. City Hospital Physician.

Sec. 6. The Board may appoint a Resident Physician of the City and County Hospital, who must be a regularly certificated physician and who must have been a resident of the City and County for at least five years next preceding his appointment. He shall devote his time exclusively to the duties of his office.

Reference. As to appointment of certain officers and employees by the Board of Health, see **Kerr's Cyc. Pol. Code**, §§ 3009, 3010.

Sec. 7. Board of Health. Physicians and Surgeons for City and County Hospital.

Sec. 7. The Board shall appoint for the City and County Hospital at least two visiting physicians and at least two visiting surgeons, who shall receive no compensation for their services, but who shall have the privilege of teaching students in their hospital wards. Any student who is actively engaged in the study of medicine shall have the benefit of clinical instruction in any of the hospital wards.

Reference. As to appointment of certain officers and employees by the Board of Health, see **Kerr's Cyc. Pol. Code**, §§ 3009, 3010.

Sec. 8. Inebriates.

Sec. 8. The Board may set aside one ward in the City and County Hospital for the treatment of confirmed inebriates.

Sec. 9. Internes to City and County Hospital. How appointed and controlled.

Sec. 9. The Board may appoint such undergraduates and other internes to the City and County Hospital as it may deem necessary. They shall be appointed after a competitive examination by the Board in any or all branches of medicine and surgery, and shall receive board and lodging free for their services. They shall be under the control and direction of the Resident Physician, who may remove any of them for neglect of duty, or for other good and sufficient cause, subject to an appeal to, and final decision by, said Board.

Sec. 10. Salaries. Restriction.

Sec. 10. The Board shall fix annually the salaries of all officers and employees of the Board. Such compensation shall not exceed salaries paid for similar services in private institutions of like character.

Reference. As to salaries of officers and employees of the Board of Health, see **Kerr's Cyc. Pol. Code**, § 3010.

Sec. 11. Limit to number of employees.

Sec. 11. The ratio of employees to inmates of any institution under the care of the Board shall not exceed that maintained by private institutions of like character.

ARTICLE XI.

DEPARTMENT OF ELECTIONS.

CHAPTER I.

Board of Election Commissioners.

Sec. 1. Five Commissioners to be appointed by Mayor; term; salary; qualifications. Time of appointment; political affiliations; equal representation.

Section 1. The conduct, management and control of the registration of voters, and of the holding of elections, and of all matters pertaining to elections in the City and County, shall be vested exclusively in and exercised by a Board of Election Commissioners, consisting of five members, who shall be appointed by the Mayor, and shall hold office for four years. Each of the Commissioners shall receive an annual salary of one thousand dollars. Each member of the Board must be an elector of the City and County at the time of his appointment and must have been such for five years next preceding such time. Those first appointed must, immediately after their appointment, so classify themselves by lot, that one shall go out of office at the end of one year, one at the end of two years, one at the end of three years, and two at the end of four years.

The Mayor shall not make any appointment upon the Board at any time before thirty days prior to the time when such appointee is to take office. Two of the five members first appointed shall be chosen from each of the two political parties casting in the City and County the highest vote for Governor or Electors of President and Vice-President, as the case may be, at the last preceding general election. The fifth member shall be chosen from the political party casting the third highest such vote at such election, if there be such third party, and if not, then at the discretion of the Mayor. Upon the expiration of the term of office of any Commissioner, the appointee must be chosen from the same political party as the retiring Commissioner, consistently with the foregoing provisions as to equal representation at all times of the two political parties casting the highest vote at the general election last preceding the appointment in question as prescribed in this section.

Reference. As to removal of Election Commissioners, see Charter, post, art. XVI, sec. 18.

Board of Election Commissioners. As to unconstitutionality of code provisions (**Kerr's Cyc. Pol. Code**, §§ 1075-1080) providing for boards of election commissioners in cities and cities and counties having one hundred and fifty thousand inhabitants or more, see Denman v. Broderick, 111 Cal. 96; 43 Pac. Rep. 516.

Sec. 2. Not to take part in politics.

Sec. 2. No member of the Board, nor Registrar, nor Deputy Registrar shall, during his term of office, be a member of any convention the purpose of which is to nominate candidates for office; nor be eligible to any other municipal office during the term for which he shall have been appointed, or for one year thereafter; nor act as officer of any election or primary election; nor take part in any election except to vote and when acting as Election Commissioner, at which time he shall perform only such official duties as may be required of him by law and by this Charter.

Sec. 3. Organization. President; term. Registrar of Voters; salary; term; Secretary of Board; duties.

Sec. 3. The Commissioners shall organize within ten days after their appointment by choosing one of their number President. In case of failure to agree, he shall be selected by lot. He shall hold office for one year and until his successor is chosen. The Board shall appoint a Registrar of Voters who shall receive an annual salary of twenty-four hundred dollars. The Registrar shall be the Secretary of the Board, and shall keep a record of its proceedings, and shall execute all orders and enforce all rules and regulations adopted by the Board. The term of office of Registrar shall be four years.

Duty of Registrar. Place on ballot. It is the duty of the Registrar to give a place on the ballot to the office of Justice of the Peace: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 372. As to the effect of bogus signatures upon a petition presented to the Board of Election Commissioners for the submission to the electors of a proposed ordinance, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 383. See Charter, ante, art. II, chap. I, sec. 20.

Sec. 4. Clerks; salaries. Section, how governed.

Sec. 4. The Board may appoint such other clerical assistants as may be necessary at a salary not to exceed one hundred dollars a month each for the time actually employed. The Board shall, by resolution adopted by a majority vote of all its members and entered upon its minutes, designate the service to be rendered by such assistants and the time for which they shall be employed. The time of employment of such assistants shall not be extended except by like resolution of the Board, and when a salary shall have been once fixed it shall not be increased. This section is subject to the provisions of Article XIII of this Charter.

References. Appointment of clerks, etc. Salaries. As to appointment of clerks and assistants, and as to salaries of various officers connected with the Department of Elections, see Lewis v. Widber, 99 Cal. 412; 33 Pac. Rep. 1128; Falk v. Reis, 88 Cal. 514; 26 Pac. Rep. 359; Meyers v. Pond, 86 Cal. 64; 24 Pac. Rep. 808. As to power of selecting employees and clerical assistants, see Schmitt v. Dunn, 55 Cal. 651; Meyers v. Pond, 86 Cal. 64; 24 Pac. Rep. 808; Falk v. Reis, 88 Cal. 514; 26 Pac. Rep. 359.

Sec. 5. General laws applicable. Precinct registration.

Sec. 5. All provisions of the general laws of this State respecting elections shall be applicable to all elections held in the City and County of San Francisco. All provisions of the general laws of this State respecting the registration of voters shall be applicable to such registration in the City and County. The Board of Election Commissioners must provide for precinct registration so far as it can do so under the Constitution and laws of the State.

References. That a certificate of party nominations filed on October 17th is in time, under **Kerr's Cyc. Pol. Code,** § 1192, for an election to be held on November 6th, see Cosgriff v. Board of Election Commissioners, June 19, 1907, Cal. Dec., vol. XXXIII, p. 705.

Stationery. Board may provide. The Board of Election Commissioners have power, under the Charter, to provide themselves with affidavit-blanks, and such other stationery as the law requires for registration, irrespective of the procedure set forth in such Charter covering other departments of the City and County government: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 135, 138. See Charter, art. II, chap. III, sec. 3.

CHAPTER II.

Municipal Elections.

Sec. 1. When held. Officers to be elected; terms.

Section 1. There shall be held in the City and County of San Francisco on the first Tuesday after the first Monday of November in the year one thousand eight hundred and ninety-nine, and in every second year thereafter, an election to be known as the municipal election.

At said elections there shall be elected by the electors of the City and County the following officers: the Mayor, eighteen Supervisors, an Auditor, Treasurer, Assessor, Tax Collector, Recorder, City Attorney, District Attorney, Public Administrator, County Clerk, Sheriff, Coroner, and four Police Judges. Each of the above officers shall be elected for two years, except the Police Judges and the Assessor, each of whom shall be elected for four years. The Superintendent of Public Schools shall be elected for four years, and the Justices of the Peace for two years, at the same time that members of the Legislature are elected.

Terms of office. The terms of those officers of the City and County elected for two years, and who took office on January 8, 1900, expired, under the Charter, on January 7, 1902. Sec. 8½ of art. XI of the Constitution puts it beyond all question that this is a municipal matter, proper to be dealt with in a freeholders' charter: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 594, 596.

Superintendents of schools. The Constitution provides that the superintendent of schools for each county shall be elected: See Const., art. IX, sec. 3.

Justices of the Peace. See Charter, ante, art. V, chap. VII, sec. 1.

Police Courts. The Charter provides for the establishment of Police Courts and for the election of Police Judges: See Charter, ante, art. V, chap. VIII. This is authorized by the Constitution, art. XI, sec. 8½, subd. 1. See Charter, ante, art. V, chap. VIII, secs. 1-17, and notes.

County officers. Under art. XI, sec. 8½, of the Constitution, the Charter may "provide for the manner in which, the times at which, and the terms for which the several county officers shall be elected or appointed." Compare Kahn v. Sutro, 114 Cal. 316; 46 Pac. Rep. 87.

Sec. 2. Term of officers elected in 1898.

Sec. 2. All of the officers of the City and County of San Francisco who shall be elected in the year one thousand eight hundred and ninety-eight, under existing laws, except the Superintendent of Public Schools and the Justices of the Peace, shall hold office only until the hour of noon on the first Monday after the first day of January in the year nineteen hundred.

Sec. 3. Take office when.

Sec. 3. The officers first elected as aforesaid under this Charter shall take office at noon on the first Monday after the first day of January following.

Sec. 4. Mayor's proclamation.

Sec. 4. The Mayor shall issue his proclamation and publish the same in the official newspaper for at least twenty days previous to the day in each year on which the municipal election is to be held under this Charter, calling upon the electors of the City and County to meet for the purpose of electing such officers as are provided for in this Charter, reciting in such proclamation the different officers to be elected at such election.

Proclamation. Notice. A proclamation is necessary to give notice of an election; an election held without notice is without authority of law: People v. Thompson, 67 Cal. 627; 9 Pac. Rep. 833; Page v. Board of Supervisors, 85 Cal. 50; 24 Pac. Rep. 607. The action of supervisors in ordering publication of an election proclamation may be proved by parol evidence, where the clerk has neglected to record such action: County of San Luis Obispo v. White, 91 Cal. 432, 437; 24 Pac. Rep. 756; 24 Pac. Rep. 864.

Same. The Mayor's proclamation is required by the Charter only as to municipal elections: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 371.

Recall by special election. Where the proceedings for the recall of an officer by a special election are void, the officer is entitled to the residue of his term and salary: Davenport v. City of Los Angeles, 146 Cal. 508, 514; 80 Pac. Rep. 684.

ARTICLE XII.

ACQUISITION OF PUBLIC UTILITIES.

Intention of the people.

It is hereby declared to be the purpose and intention of the people of the City and County that its public utilities shall be gradually acquired and ultimately owned by the City and County. To this end it is hereby ordained:

Sec. 1. Plans and estimates of cost of construction. Cost of water works; sources of supply; Supervisors to negotiate for acquisition.

Section 1. Whenever the Board of Supervisors by ordinance, as hereinafter provided, shall determine that the public interest or necessity demands the acquisition, construction or completion of any public utility or utilities by the City and County, or whenever the electors shall petition the Board of Supervisors, as provided in Section 3 of this Article, for the acquisition of any public utility or utilities, the Board of Supervisors must procure from the Board of Public Works, through the City Engineer, plans and estimates of the cost of original construction and completion, by the City and County, of such public utility or utilities.

In securing estimates of the cost of original construction and completion of water works, by the City and County, the Board of Supervisors must procure, as hereinabove specified, and place on file plans and estimates of the cost of obtaining, from such sources as the Board of Supervisors may designate as available, a sufficient supply of good, pure water for the City and County. [Amendment approved, and in effect, February 5, 1903.]

Amended section. The amended section read as follows: Section 1. Within one year from the date upon which this Charter shall go into effect, and at least every two years thereafter until the object expressed in this provision shall have been fully attained, the Supervisors must procure through the City Engineer plans and estimates of the actual cost of the original construction and completion by the City and County of water works, gas works, electric light works, steam, water or electric power works, telephone lines, street railroads and such other public utilities as the Supervisors or the people by petition to the Board may designate.

In securing estimates of the original cost of the construction and completion of water works by the City and County, the Supervisors must procure and place on file plans and estimates of the cost of obtaining from all of the several available sources a sufficient and permanent supply of good, pure water for the City and County, in order that propositions for the acquisition, construction and completion thereof, and the incurring of municipal indebtedness therefor, may be submitted to the electors of the City and County as hereinafter set forth.

Construction of section. As to interpretation of the provision of this section concerning the submission to the people of one proposition involving public utilities before plans for all others have been procured, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 478.

Sec. 2. Offers for the sale of utilities.

Sec. 2. Before submitting propositions to the electors for the acquisition by original construction or condemnation of public utilities, the Board of Supervisors must solicit and consider offers for the sale to the City and County of existing utilities, in order that the electors may have the benefit of acquiring the same at the lowest possible cost thereof. [Amendment approved, and in effect, February 5, 1903.]

Amended section. The amended section read as follows: Sec. 2. After such plans and estimates shall have been procured and filed, the Supervisors shall, at as early a date as they may deem for the best interests of the City and County, enter into negotiations for the permanent acquisition by the City and County, by original construction, condemnation or purchase of such or any of said public utilities as they may regard most important to the City and County to be first acquired, and to formulate and submit to the electors of the City and County, at a special election, propositions for the permanent acquisition and ownership thereof.

Before submitting propositions to the electors for the acquisition by original construction or condemnation, of public utilities, the Supervisors must solicit and consider offers for the sale to the City and County of existing utilities in order that the electors shall have the benefit of acquiring the same at the lowest possible cost thereof.

Sec. 3. Petition of electors. Duty of Supervisors. Duty of Clerk. Mayor may also submit proposition. Two alternative propositions. Supervisors may proceed at once; power of Supervisors.

Sec. 3. Whenever a petition or petitions, each signed by electors of the City and County equal in number to fifteen per centum of all the votes cast in the City and County at the last preceding general election, shall be presented to the Board of Supervisors, setting forth that the signers of such petition or petitions favor the acquisition of the public utility or utilities therein named, it shall be the duty of the Clerk of the Board of Supervisors to immediately proceed to examine and verify the signatures to such petition or petitions, and to certify the result of such examination to the Board of Supervisors. If the required number of signatures be found to be genuine, the Clerk shall transmit to the Mayor an authentic copy of such petition or petitions, without the signatures thereto.

Upon receiving a certificate of the Clerk that the petition or petitions contain the required number of genuine signatures, it shall be the duty of the Board of Supervisors to procure, in the manner specified in Section 1 of this Article, plans and estimates of the cost of original construction and completion of each public utility named in such petition or petitions.

Thereafter, the Board of Supervisors shall formulate, for submission to the electors of the City and County at a special election called for the purpose, a separate proposition for the acquisition of each public utility named in such petition or petitions.

The Mayor shall also have the right to formulate and submit to the electors. at such special election, a proposition for the acquisition of each public utility named in such petition or petitions, separate from the proposition therefor formulated by the Board of Supervisors.

All propositions formulated under the provision of this Section shall be completed within six months after the filing of such petition or petitions.

Nothing in this Section shall be so construed as to prohibit the Board of Supervisors from responding to the aforesaid petition or petitions of the electors requesting the acquisition of any public utility or utilities by proceeding at once, without the submission of propositions to the electors as aforesaid, to pass an Ordinance declaring its determination, as provided in Section 5 of this Article, to acquire the same and from proceeding thereafter to secure the acquisition thereof, as hereinafter provided. [Amendment approved, and in effect, February 5, 1903.]

Amended section. The amended section read as follows: Sec. 3. When a petition or petitions signed by electors of the City and County equal in number to fifteen per centum of all the votes cast at the last preceding general election shall be presented to the Supervisors, setting forth that the signers thereof favor the acquisition by the City and County of any public utility, and requesting the Board to prepare for submission to the electors of the City and County, as hereinafter provided. a proposition for the acquisition of such utility, it shall be the duty of the Board to immediately take such steps or to enter into such negotiations as will enable it to formulate such a proposition for submission to the electors as aforesaid. Such proposition shall be so formulated and completed within six months from the date of the filing of such petition. The Clerk of the Supervisors must, immediately upon the filing of the aforesaid petition or petitions, after examining and verifying the signatures thereto, transmit an authenticated copy thereof, without the signatures, to the Board of Election Commissioners. and another such copy to the Mayor, together with a certificate that the required number of signatures are appended to the original. The Mayor shall also have the right to formulate and submit to the electors a separate proposition from that formulated by the Supervisors for the acquisition of the utility named in said petition. At the next municipal election after the formulation of such propositions by the Supervisors and the Mayor, the Board of Election Commissioners shall submit to the electors the two alternative propositions. The proposition receiving a majority of the votes cast thereon shall be adopted; but in case the votes cast in favor of both propositions shall not exceed one-half the total number of votes cast thereon, both propositions shall be deemed rejected.

Nothing in this section shall be so construed as to prohibit the Supervisors from responding to the aforesaid petition of the electors requesting the acquisition of any public utility by proceeding at once, without the submission of propositions to the electors as aforesaid, to pass an ordinance declaring its determination to acquire the same as provided in section six of this Article and from proceeding thereafter to acquire the same in the manner hereinafter provided.

References. Compare Charter, ante, art. II, chap. I, secs. 20, 21.

Submission of questions to voters. See Murphy v. San Luis Obispo, 119 Cal. 624; 51 Pac. Rep. 1085.

Same. Mandamus. City clerk. The city clerk of Los Angeles may be compelled by mandamus to sign and certify to the passage of an ordinance calling a special election and submitting the question of the issuance of bonds for water-works and a sewerage system: Los Angeles v. Hance, 137 Cal. 490; 70 Pac. Rep. 475.

Question of acquisition must be submitted to people. Expenditures authorized. Options. Whether a public utility is to be purchased out of funds raised by a general tax levy, or is to be paid for by an issuance of bonds, the question of acquisition must be submitted to the people before any such purchase can be made. The only expenditures which the Charter contemplates prior to the actual construction or purchase are those incident to the making of plans and estimates and the holding of the election at which the popular will is taken. There is no provision which, under the most liberal construction, would justify any expenditure for an "option"; none which seems to regard such an expenditure as a possibility: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 390, 392.

Procedure prior to calling election. As to the procedure required by the Charter prior to the calling of an election for the submission to electors of bonding propositions for the acquisition of hospitals, parks, etc., see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 485. Compare secs. 6, 8, and 9, infra, of this article, and Charter, post, art. XVI, sec. 29.

Same. Plans and estimates must have been procured. The Board of Supervisors may, when it has plans and estimates ready upon any one public utility, submit the proposition for the permanent acquisition thereof to the people. But no proposition can be submitted until plans and estimates have been procured: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 478, 481.

Sec. 4. Supervisors to call special election when and for what purpose. Acquisition through annual revenues. Majority of electors to decide. Acquisition through bond issues. Board to undertake proceedings when. Two-thirds vote of electors to decide.

Sec. 4. At the next regular meeting after the completion of the proposition or propositions for the acquisition of the public utility or utilities named in such petition or petitions, the Board of Supervisors by Ordinance, as hereinafter in Section 6 provided, shall call a special election at which the propositions of the Board of Supervisors and of the Mayor, if he formulate any, shall be submitted to the electors of the City and County.

When the cost of any public utility or utilities named in such petition or petitions can be paid out of the annual revenues of the City and County in addition to the other necessary expenses thereof, each proposition therefor, submitted to the electors, shall specify the cost of the utility therein proposed for acquisition by the City and County, the proposed method and manner of payment thereof, and the Board of Supervisors shall submit therein to the electors the question whether the same shall be acquired upon such terms. A majority of the electors voting at such special election shall be necessary to accept such proposition.

At as early a date after the determination of the result of such special election as the Board of Supervisors shall deem for the best interests of the City and County, it shall undertake proceedings and enter into such negotiations and contracts as may be necessary for the acquisition of any public utility or utilities named in any proposition or propositions accepted by a majority of the electors voting at such special election.

If, however, the cost of any public utility or utilities, named in any petition or petitions of the electors, shall so far exceed the annual revenues of the City and County, in addition to the other necessary expenses thereof, as to render it necessary to incur a municipal bonded indebtedness therefor, each proposition for the acquisition of such public utility or utilities shall specify the amount of the bonded indebtedness necessary therefor and the rate of interest thereon, and the Board of Supervisors shall submit to the electors, at such special election, the question whether such bonded indebtedness shall be incurred. At least two-thirds of the electors voting at such special election shall be necessary to secure the acquisition of such public utility or utilities and to warrant the issuance of municipal bonds therefor. [Amendment approved, and in effect, February 5, 1903.]

Amended section. The amended section read as follows: Sec. 4. In case the cost of any public utility sought to be acquired under the provisions of this Article, can be paid out of the annual revenues of the City and County, in addition to the other necessary expenditures thereof, it shall be lawful to acquire the same by a majority vote of the electors voting thereon at any special election. In submitting propositions to the electors for such acquisition the Supervisors shall specify in such proposition the cost of the public utility, the proposed method and manner of payment therefor, and submit to the electors the question whether the same shall be acquired upon such terms.

In case, however, the cost of such public utility sought to be acquired under the provisions of this Article shall so far exceed the annual revenues of the City and County, in addition to the other necessary expenditures thereof, as to render it necessary to incur a municipal bonded indebtedness for such purpose, then the Supervisors, in submitting propositions to the electors for the acquisition thereof, shall specify therein the amount of the proposed bonded indebtedness, the rate of interest thereon, and whether such bonded indebtedness shall be incurred. At least two-thirds of the electors voting thereon at such election shall be necessary to secure such acquisition and to warrant the issuance of municipal bonds therefor, as hereinafter set forth.

Construction of section. It scarcely admits of a doubt that this section contemplates and requires a two-thirds vote of all the votes cast at the election. Whatever doubt, however, a reading of this section might leave in the mind is absolutely removed when consideration is paid to the fact that sec. 4 of art. XII, as originally adopted, declared that "at least two-thirds of the electors voting thereon at such election shall be necessary to secure such acquisition and to warrant the issuance of municipal bonds therefor": Law v. San Francisco, 144 Cal. 384, 396.

References. See Charter, ante, art. III, chap. I, sec. 9; Const., art. XI, sec. 18.

That section 5 of article XII of said Charter be annulled and repealed. [Amendment approved, and in effect, February 5, 1903.]

Repealed section. Sec. 5 of art. XII of the Charter was annulled and repealed. The repealed section read as follows: Sec. 5. When the electors by vote shall have determined, as hereinbefore set forth, to acquire any public utility, such action on the part of the electors shall be equivalent to the passing of the ordinance by the Supervisors declaring such determination as set forth in section six of this Article, and the Supervisors shall proceed without delay to pass an ordinance calling a special election as required by section seven of this Article.

Reference. Compare sec. 3 of this article, ante.

Sec. 5. Ordinance of intention to be published two weeks. Duty of Board when cost can be paid out of annual revenues. Incurring of municipal bonded indebtedness.

Sec. 5. Whenever the Board of Supervisors shall determine that the public interest or necessity demands the acquisition, construction or completion of any public utility or utilities, it shall specifically declare such determination by an Ordinance, which shall also direct the Board of Public Works to procure and file plans and estimates of the cost of original construction and completion of such public utility or utilities. Such Ordinance shall be published for at least two weeks in the official newspaper.

When the cost of such public utilities, or any of them, can be paid out of the annual revenues of the City and County in addition to the other necessary expenses thereof, the Board of Supervisors shall, as soon after the filing of the plans and estimates of cost thereof as it may deem for the best interests of the City and County, enter into such negotiations and contracts as may be necessary for the acquisition of the same.

If, however, the cost of such public utilities, or any of them, shall so far exceed the annual revenues of the City and County in addition to the other necessary expenses thereof, as to render it necessary to incur a municipal bonded indebtedness therefor, the Board of Supervisors shall, at any regular meeting held within eight weeks after the filing of the plans and estimates of cost thereof, by Ordinance, as hereinafter in Section 6 of this Article provided, call a special election, at which shall be submitted to the electors a proposition or propositions for the acquisition of such public utility or utilities. Such propositions shall specify the amount of the bonded indebtedness necessary for the acquisition of the utility or utilities therein named and the rate of interest thereon, and the Board of Supervisors shall submit to the electors the question or questions whether such bonded indebtedness shall be incurred. At least two-thirds of the electors voting at such special election shall be necessary to warrant the issuance of municipal bonds for the acquisition of such public utilities, or any of them. [Amendment approved, and in effect, February 5, 1903.]

Amended section. Sec. 6 of art. XII of the Charter was amended so as to be known as sec. 5 of art. XII. The amended section read as follows: Sec. 6. When the Supervisors shall determine that the public interest or necessity demands the acquisition, construction or completion of any public utility, the cost of which will be too great to be paid out of the ordinary annual income and revenue of the City and County, the Supervisors shall, by ordinance, specifically declare such determination, and shall publish the same for at least two weeks in the official newspaper.

Declaration of necessity of acquiring improvements is unnecessary when. In proceedings to acquire land, it is not necessary to declare the necessity of acquiring the improvements located thereon, as an acquisition of the land carries with it all such improvements: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 607, 610.

Bills for acquisition of public utilities. Discussion and analysis. For a discussion as to the sufficiency of declaratory bills for the acquisition, construction, and completion of municipal water-works and of street-railroads, with an analysis of Charter provisions relating to the same, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 575, 581.

As to the consideration of various bills looking to acquisition or construction of water-works, street-railroads, parks, hospitals, sewers, etc., see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 561.

As to consideration of question relating to the proposed construction of a municipal street-railroad on Geary Street, including the necessary elections, see Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 691.

Sec. 6. Ordinance calling special election. Questions to be submitted.

Sec. 6. Whenever, under the provisions of this Article, it shall be necessary to call a special election for the purpose of submitting to the electors a proposition or propositions for the acquisition of public utilities, the Board of Supervisors shall pass an Ordinance calling such special election for such purpose.

At such special election all propositions for the acquisition of public utilities, formulated under the provisions of this Article, may be submitted to the electors of the City and County. No question except the acquisition of public utilities and the incurring of municipal indebtedness therefor shall be submitted at such special election. [Amendment approved, and in effect, February 5, 1903.]

Reference. Compare Charter, ante, art. II, chap. I, secs. 21, 22, and sec. 3 of this article.

Amended section. Sec. 7 of art. XII of the Charter was amended so as to be known as sec. 6 of art. XII. The amended section read as follows: Sec. 7. At the next regular meeting of the Supervisors after the publication of the ordinance declaring said determination as above set forth, or at an adjourned meeting thereof, or not less than two weeks nor more than four weeks after the electors by vote shall have determined to acquire any public utility, the Supervisors by ordinance shall call a special election, at which shall be submitted to the electors the proposition of acquiring such public utility, and of incurring a debt for the acquisition of the same as set forth in such ordinance. No question other than the acquisition of such utility and the incurring of the indebtedness therefor shall be submitted at such election.

Sec. 7. Ordinance for special election shall set forth what. Bonded indebtedness.

Sec. 7. The Ordinance calling such special election shall set forth the purposes for which the election is called, the estimated cost of each utility proposed for acquisition by the City and County, the proposed method and manner of payment thereof, and shall fix a day on which such special election shall be held, the manner of holding such election and the manner of voting for or against each proposition thereat submitted to the electors; and, if it shall be necessary to incur a municipal indebtedness for any utility or utilities therein proposed for acquisition by the City and County, the Ordinance shall specify the objects and purposes for which such indebtedness is proposed to be incurred, and that bonds of the City and County shall issue for the payment of the cost of such utility or utilities, as in such Ordinance set forth (if the proposition or propositions therefor be accepted by the electors). Such election shall be held as provided by law for holding elections in the City and County. [Amendment approved, and in effect, February 5, 1903.]

Amended section. Sec. 8 of art. XII of the Charter was amended so as to be known as sec. 7 of art. XII. The amended section read as follows: Sec. 8. The ordinance calling such special election shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the proposed public utility, the necessity for the acquisition of the same, and that bonds of the City and County shall issue for the payment of the cost of the same as in such ordinance set forth (if the proposition be accepted by the electors), and shall fix a day on which such special election shall be held, the manner of holding such election, and the manner of voting for or against incurring such indebtedness. Such election shall be held as provided by law for holding elections in the City and County.

Sec. 8. Publication of ordinance for ten days. Notice of election for fourteen days.

Sec. 8. Such Ordinance shall be published daily for at least ten days in the official newspaper. At the expiration of said ten days the Supervisors shall cause to be published daily for not less than two weeks in the official newspaper a notice of such special election. Such notice shall specify the purpose for which the indebtedness is to be incurred, the number and character of the bonds to be issued, the rate of interest to be paid, and the amount of tax levy to be made for the payment thereof. [Amendment approved, and in effect, February 5, 1903.]

Amended section. Sec. 9 of art. XII of the Charter was amended by renumbering the same so as to be known as sec. 8 of art. XII. The amended section read as follows: Sec. 9. Such ordinance shall be published daily for at least ten days in the official newspaper. At the expiration of said ten days the Supervisors shall cause to be published daily for not less than two weeks in the official newspaper a notice of such special election. Such notice shall specify the purpose for which the indebtedness is to be incurred, the number and character of the bonds to be issued, the rate of interest to be paid, and the amount of tax levy to be made for the payment thereof.

Sec. 9. Limit to indebtedness.

Sec. 9. No indebtedness shall be incurred for the acquisition of any public utility under the provisions of this Article, which, together with the existing bonded indebtedness of the City and County, shall exceed at any one time fifteen per centum of the assessed value of all real and personal property in the City and County. [Amendment approved, and in effect, February 5, 1903.]

Amended section. Sec. 10 of art. XII of the Charter was amended by renumbering the same so as to be known as sec. 9 of art. XII. The amended section read as follows: Sec. 10. No indebtedness shall be incurred for the acquisition of any public utility under the provisions of this Article, which, together with the existing bonded indebtedness of the City and County, shall exceed at any one time fifteen per centum of the assessed value of all real and personal property in the City and County.

Sec. 10. Serial bonds; manner and time of payment. Bonds to be exempt from taxation; denominations; where and when payable; issued as required; how to be sold; proceeds; surplus.

Sec. 10. The bonds issued under the provisions of this Article shall be of the character of bonds known as serials, and shall be payable in lawful money of the United States. The Supervisors shall decide at the time of the issue of the bonds in what lawful money of the United States said bonds shall be payable. Not less than one-fortieth part of the whole amount of indebtedness shall be paid each and every year, on a day and at a place to be fixed by the Supervisors, together with the interest on all sums unpaid at such date.

The bonds so issued shall be exempt from all taxation for municipal purposes, and shall be issued in denominations of not less than ten dollars nor greater than one thousand dollars, and preference in the sale and allotment thereof shall be given to subscribers for the smallest amounts and lowest denominations.

Said bonds must be payable on the day and at the place fixed therein, and with interest at the rate specified therein, but such interest shall not exceed four per centum per annum, payable annually, semi-annually or quarterly, as the Supervisors may determine. Such bonds when issued may be sold by the Supervisors from time to time as required, and in such quantities as they may determine, but the same must be sold for cash in lawful money of the United States as aforesaid to the highest bidder at not less than par, after having been advertised in the official newspaper. They shall be sold under sealed proposals, and the Supervisors shall have the right to reject any or all bids made for the purchase thereof. The proceeds of such sales shall be placed in the treasury to the credit of the proper fund and shall be applied exclusively to the purposes and objects mentioned in the Ordinance authorizing their issue until such objects are fully accomplished, after which, if any surplus remains, such surplus shall be transferred to the General Fund. [Amendment approved, and in effect, February 5, 1903.]

Amended section. Sec. 11 of art. XII of the Charter was amended by renumbering the same so as to be known as sec. 10 of art. XII. The amended section read as follows: Sec. 11. The bonds issued under the provisions of this Article shall be of the character of bonds known as serials, and shall be payable in lawful money of the United States. The Supervisors shall decide at the times of the issue of the bonds in what lawful money of the United States said bonds shall be payable. Not less than one-fortieth part of the whole amount of indebtedness shall be paid each and every year, on a day and at a place to be fixed by the Supervisors, together with the interest on all sums unpaid at such date.

The bonds so issued shall be exempt from all taxation for municipal purposes, and shall be issued in denominations of not less than ten dollars nor greater than one thousand dollars, and preference in the sale and allotment thereof shall be given to subscribers for the smallest amounts and lowest denominations.

Said bonds must be payable on the day and at the place fixed therein, and with interest at the rate specified therein, but such interest shall not exceed four per centum per annum, payable annually, semi-annually or quarterly, as the Supervisors may determine. Such bonds, when issued, may be sold by the Supervisors from time to time as required, and in such quantities as they may determine, but the same must be sold for cash in lawful money of the United

States as aforesaid to the highest bidder at not less than par, after having been advertised in the official newspaper. They shall be sold under sealed proposals, and the Supervisors shall have the right to reject any or all bids made for the purchase thereof. The proceeds of such sales shall be placed in the treasury to the credit of the proper fund and shall be applied exclusively to the purposes and objects mentioned in the ordinance authorizing their issue until such objects are fully accomplished, after which, if any surplus remains, such surplus shall be transferred to the General Fund.

References. As to election for bonds, see Murphy v. San Luis Obispo, 119 Cal. 624; 51 Pac. Rep. 1085. As to funding and refunding of city indebtedness, see **Kerr's Cyc. Pol. Code,** §§ 4445-4449.

Sec. 11. Signatures. Coupons.

Sec. 11. Such bonds shall be signed by the Mayor and the Treasurer, and shall be countersigned by the Auditor. The coupons shall be numbered consecutively and signed by the Treasurer, and the bonds and coupons shall be payable at the office of the Treasurer. [Amendment approved, and in effect, February 5, 1903.]

Amended section. Sec. 12 of art. XII of the Charter was amended by renumbering the same so as to be known as sec. 11 of art. XII. The amended section read as follows: Sec. 12. Such bonds shall be signed by the Mayor and the Treasurer, and shall be countersigned by the Auditor. The coupons shall be numbered consecutively and signed by the Treasurer, and the bonds and coupons shall be payable at the office of the Treasurer.

Sec. 12. Annual tax for interest and sinking fund.

Sec. 12. At the time of levying the municipal tax and in the manner provided for such tax levy, the Supervisors shall levy and collect annually a tax sufficient to pay the annual interest on such bonds, and also the proper aliquot part of the aggregate amount of such indebtedness so incurred. Such taxes shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the same time and in the same manner as other municipal taxes are collected. [Amendment approved, and in effect, February 5, 1903.]

Amended section. Sec. 13 of art. XII of the Charter was amended by renumbering the same so as to be known as sec. 12 of art. XII. The amended section read as follows: Sec. 13. At the time of levying the municipal tax and in the manner provided for such tax levy, the Supervisors shall levy and collect annually a tax sufficient to pay the annual interest on such bonds, and also the proper aliquot part of the aggregate amount of such indebtedness so incurred. Such taxes shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the same time and in the same manner as other municipal taxes are collected.

Sec. 13. Penalty for failure to enforce this article.

Sec. 13. A neglect or refusal on the part of the Supervisors to comply with the provisions of this Article shall constitute cause for the removal from office of any member or members of the Board guilty of such neglect or refusal. [Amendment approved, and in effect, February 5, 1903.]

Amended section. Sec. 14 of art. XII of the Charter was amended by renumbering the same so as to be known as sec. 13 of art. XII. The amended section read as follows: Sec. 14. A neglect or refusal on the part of the Supervisors to comply with the provisions of this Article shall constitute cause for the removal from office of any member or members of the Board guilty of such neglect or refusal.

Reference. As to the removal of civil officers, otherwise than by impeachment, see **Kerr's Cyc. Penal Code.** §§ 758-772, and elaborate notes thereto. See also Fitch v. Board of Supervisors, 122 Cal. 285; 54 Pac. Rep. 901; and Charter, post, art. XVI, secs. 18-20.

ARTICLE XIII.

CIVIL SERVICE.

Sec. 1. Three Commissioners. Qualifications. To be appointed by Mayor. Terms. Salary.

Section 1. Immediately upon the taking effect of this Charter the Mayor shall appoint three persons, known by him to be devoted to the principles of Civil Service reform, who shall constitute the Civil Service Commission, one for one year, one for two years, and one for three years. Each year thereafter the Mayor shall in like manner appoint one person as the successor of the Commissioner whose term of office expires in that year, to serve as such Commissioner for three years. All appointments shall be so made that not more than one Commissioner shall at any time belong to the same political party. Each of such Commisioners shall receive an annual salary of twelve hundred dollars.

Sec. 2. Classified service.

Sec. 2. The Commissioners shall classify all the places of employment in or under the offices and departments of the City and County mentioned in section eleven of this Article, with reference to the examinations hereinafter provided for. The places so classified by the Commissioners shall constitute the classified civil service of the City and County, and no appointment to any such place shall be made except according to the rules hereinafter mentioned.

Sec. 3. Rules of Commissioners.

Sec. 3. The Commissioners shall make rules to carry out the purposes of this Article, and for examinations, appointments, promotions, and removals, and in accordance with its provisions may from time to time, make changes in the existing rules. All rules and all changes therein shall be forthwith printed for distribution by the Commissioners.

Sec. 4. Examination of applicants. How conducted. Tests.

Sec. 4. All applicants for places in the classified civil service shall be subjected to examination, which shall be public, competitive and free. Such examinations shall be practical in their character, and shall relate to those matters only which will fairly test the relative capacity of the persons examined to discharge the duties of the positions to which they seek to be appointed, and shall include, when appropriate, tests of physical qualifications, health, and of manual or professional skill.

Reference. As to qualification of deputies and eligibility to hold offices, see Charter, post, art. XVI, secs. 2, 15.

Applicants to be American citizens. The Commissioners may require applicants for positions to be American citizens at the time examinations are held: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 640, 642.

Sec. 5. Selection of laborers. Examiners.

Sec. 5. The selection of laborers shall be governed by priority of application only. No question in any examination shall relate to political or religious opinions or affiliations. The Commissioners shall control all examinations, and may, whenever an examination is to take place, designate a suitable number of persons, either in or not in the official service of the City and County, to be examiners; and, if in the official service, it shall be a part of their official duty, without extra compensation, to conduct such examinations as the Commissioners may direct, and to make return and report thereof to the Commissioners. The Commissioners may substitute any other person, whether in or not in such service, in the place of any one so selected, or may themselves act as such examiners.

Sec. 6. Notice of examinations.

Sec. 6. Notice of the time, place and general scope of every examination shall be given by the Commissioners by publication for two weeks preceding such examination in the official newspaper, and such notice shall also be posted by the Commissioners in a conspicuous place in their office for two weeks before such examination. Such further notice of examination shall be given as they may prescribe.

Sec. 7. Commissioners to prepare registers of each class of positions.

Sec. 7. From the returns of the examiners, or from the examinations made by the Commissioners, the Commissioners shall prepare a register for each grade or class of positions in the classified service of the City and County of the persons whose general average standing upon examination for such grade or class is not less than the minimum fixed by the rules of the Commissioners, and who are otherwise eligible. Such persons shall take rank upon the register as candidates in the order of their relative excellence, as determined by examination, without reference to priority of time of examination.

Purpose of examinations. The purpose of holding examinations is to provide an eligible list: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 640, 641.

Civil Service rules. Workable system. There is no such position as "ordinary clerk" known to the Charter. The term "ordinary clerk" is used by the Civil Service Commissioners to designate an arbitrary class established by them, from which various extra clerks allowed to various officers and departments must be appointed, and by the method adopted by the Commissioners, when the term of employment ends, or the services of such clerk are no longer required, he is treated as no longer an employee, and his name is again placed on the register of candidates according to the relative excellence of his examination, without regard to the priority of the examination. This course of action accords with the letter and spirit of the Civil Service provisions of the Charter, and makes a workable system: Rodrigue v. Rogers, Ct. of App., 1st Dist., Aug. 24, 1906; 87 Pac. Rep. 563.

Same. Positions for limited periods. Various positions are provided for in the Charter, which, by the law of their creation, are not continuous or permanent, but are intended by the law to be for limited periods: Rodrigue v. Rogers, Ct. of App., 1st Dist., Aug. 24, 1906; 87 Pac. Rep. 563.

Same. Method of Commissioners. There is no warrant in the Charter for the position that by an appointment to a position in the Department of Elections the appointee thereby becomes entitled to hold a similar or any position in any other office or department of the municipal government. On the contrary, it is perfectly apparent that the head of each department may appoint his own subordinates and assistants, after requisition by the head of such department and certification by the Civil Service Commissioners. Hence, where a person was employed for a limited term in the Department of Elections, he ceased to hold office, or to be an employee of the municipality, upon the expiration of the term of his employment; and by again placing his name on the register of candidates according to the relative excellence of his examination, without regard to the priority of the examination, the Commissioners complied with this section of the Charter, and accorded to such person his full rights: Rodrigue v. Rogers, Ct. of App., 1st Dist., Aug. 24, 1906; 87 Pac. Rep. 563.

Sec. 8. Promotions, basis of. Eligibility. Rating.

Sec. 8. The Commissioners shall provide for promotion in the classified service on the basis of ascertained merit and seniority in service and standing upon examination, and shall provide, in all cases where practicable, that vacancies shall be filled by promotion. All examinations for promotion shall be competitive among such members of the next lower rank established by the Commissioners for each department as desire to submit themselves to such examinations. The Commissioners shall submit to the appointing power the names of not more than three applicants having the highest rating for each promotion. The method of examining, and the rules governing the same, and the method of certifying, shall be the same, as near as may be, as provided for applicants for original appointments.

Sec. 9. Duty of heads of departments. Candidates highest on register. Sex disregarded.

Sec. 9. The head of the department or office, in which a position classified under this Article is to be filled, shall notify the Commissioners of that fact, and the Commissioners shall then certify to the appointing officer the name and address of one or more candidates, not exceeding three, standing highest upon the register for the class or grade to which the position belongs; but laborers shall be taken according to their priority of application. In making such certification, sex shall be disregarded, except when some statute, the rules of the Commissioners, or the appointing power specifies sex.

Sec. 10. Appointments on probation. Conditions of discharge. Temporary appointments.

Sec. 10. The appointing officer shall notify the Commissioners of each position to be filled separately, and shall fill such place by the appointment of one of the persons certified to him by the Commissioners therefor. Such appointment shall be on probation for a period to be fixed by the rules of the Commissioners; but such rules shall not fix such period at exceeding six months. The Commissioners may strike off names of candidates from the register after they have remained thereon more than two years. At or before the expiration of the period of probation, the head of the department or office in which a candidate is employed, may, by and with the consent of the Commissioners, discharge him upon assigning in writing his reason therefor to the Commissioners. If he is not then discharged, his appointment shall be deemed complete. To prevent the stoppage of public business, or to meet extraordinary exigencies, the head of any department or office may, with the approval of the Commissioners, make temporary appointments, to remain in force not exceeding sixty days, and only until regular appointments, under the provisions of this Article, can be made.

Appointment. Board of Public Works. Civil Service. The Board of Public Works has power to create an official position without the consent of the Board of Civil Service Commissioners: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 481, 483.

Sec. 11. Departments governed by this article. Exemptions. Other appointees.

Sec. 11. The provisions of this Article shall apply to the following offices and departments of the City and County: the County Clerk, the Assessor, the Tax Collector, the Sheriff, the Auditor, the Recorder, the Coroner, the Clerks and Stenographers of the Justices' and Police Courts, the Board of Public Works, the Police Department, the Fire Department, the Board of Election Commissioners, the Board of Health and all boards or departments controlling public utilities; but the following deputies, clerks and employees in said offices and departments shall be exempted therefrom: the Cashier of the County Clerk, the Chief Deputy and the Cashier of the Assessor, the Chief Deputy and the Cashier of the Tax Collector, the Under Sheriff and the Chief Bookkeeper of the Sheriff, the Deputy Auditor, the Chief Deputy of the Recorder, the Chief Deputy Coroner, the City Engineer, the Secretary and the Architect of the Board of Public Works, the Registrar of the Board of Election Commissioners, the Chief of Police, the Chief Engineer of the Fire Department, and all physicians appointed by or on the Board of Health. All officers, courts, boards and heads of departments vested in this Charter with the power to appoint deputies, clerks, stenographers or employees in any of the offices or departments of the City and County mentioned in this section shall make such appointments in conformity with the rules and provisions prescribed by this Article, and any appointment not so made shall be void.

Reference. Compare Charter, post, art. XVI, sec. 35, and notes.

Construction of article. Civil Service. This article must now be read, in view of Crowley v. Freud, 132 Cal. 440; 64 Pac. Rep. 696, as if it never was intended to govern deputyships in county offices. These we may consider as among the excepted classes to which Civil Service rules do not apply. Where the Civil Service provisions are by law applicable, as in the case of certain municipal officers, appointments of all classes must be made in conformity therewith. But where the Charter could not fix the mode of appointment, as in the case of the deputies to county officers, so called, the appointments must be made directly by the head of the office, and without relation to article XIII. It follows that if the Charter cannot control the method by which one deputy in a county office may be appointed, it cannot control as to another, whether such deputy be termed "regular, permanent, temporary, extra, or additional": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 544, 545.

Appointments by Recorder. Civil Service. The Recorder is a county officer, and it is not competent for the Charter to provide for the qualifications of either the Recorder or his deputies: Crowley v. Freud, 132 Cal. 440; 64 Pac. Rep. 696. The Recorder may appoint copyists in his office, without reference to a Civil Service examination, as they are employees within the prohibition of the injunction against examination thereof by the Civil Service Commissioners. The word "deputies" is to be liberally construed, under sec. 8½, art. XI, of the State Constitution: Garnett v. Brooks, 136 Cal. 585; 69 Pac. Rep. 298.

Sec. 12. Dismissals for cause only. Investigation of charges. Suspensions.

Sec. 12. No deputy, clerk or employee in the classified civil service of the City and County, who shall have been appointed under said rules, shall be removed or discharged except for cause, upon written charges and after an opportunity to be heard in his own defense. Such charges shall be investigated by or before the Civil Service Commission, or by or before some officer or board appointed by the Commissioners to conduct such investigation. The finding and decision of the Commissioners, or such investigating officer, or board, when approved by the Commissioners, shall be certified to the appointing officer or board, and shall be forthwith enforced by such officer. Nothing in this Article shall limit the power of any officer or board to suspend a subordinate for a reasonable period, not exceeding thirty days.

Constitutionality of sections of this article. All of the sections of this article, except section 12, are constitutional and valid, and whether section 12 is or is not constitutional, the other sections of the article are independent of it, and will stand, though section 12 is eliminated: Cahen v. Wells, 132 Cal. 447, 453; 64 Pac. Rep. 699.

Sec. 13. Notice of appointments, promotions, or changes.

Sec. 13. Immediate notice in writing shall be given by the appointing power to the Commissioners of all appointments, permanent or temporary, made in such classified civil service, and of all transfers, promotions, resignations, suspensions or vacancies from any cause in such service, and of the date thereof; and a record of the same shall be kept by the Commissioners. When any place of employment is created or abolished, or the compensation attached thereto altered, the officer or board making such change shall immediately report in writing to the Commissioners.

Sec. 14. Duties of Commissioners.

Sec. 14. The Commissioners shall investigate the enforcement of the provisions of this Article, and of its rules, and the action of the examiners herein provided for, and the conduct and action of the appointees in the classified service in the City and County, and may inquire as to the nature, tenure and compensation of all places in the public service thereof.

Sec. 15. Annual report of Commissioners.

Sec. 15. The Commissioners shall, on or before the fifteenth day of January in each year, make to the Supervisors a report showing their acts, the rules in force, the practical effects thereof, and suggestions for the more effectual accomplishment of the purposes of this Article. The Mayor may require a report from the Commissioners at any time.

Sec. 16. Chief Examiner; Secretary of Commission; duties; salary.

Sec. 16. The Commissioners shall employ a Chief Examiner who shall, under their direction, superintend any examination held in the City and County under this Article, and who shall perform such other duties as the Commissioners may prescribe. The Chief Examiner shall be Secretary of the Commission by virtue of his office. He shall keep minutes of its proceedings, preserve all reports made to it, and keep a record of all examinations held under its direction. He shall receive an annual salary of twenty-four hundred dollars.

Sec. 17. Offices and supplies.

Sec. 17. The Supervisors shall furnish the Commission with suitable offices, office furniture, books, stationery, blanks, heat and light, and shall provide for the payment of such other expenses as may be necessarily incurred in carrying out the provisions of this Article.

Sec. 18. No aid, hindrance, fraud, or collusion permitted.

Sec. 18. No person or officer shall by himself, or in cooperation with other persons, defeat, deceive or obstruct any person in respect to his or her right of examination; or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined hereunder, or aid in so doing; or make any false representations concerning the same, or concerning the person examined; or furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person of being appointed, employed or promoted.

Sec. 19. Certificate to Auditor of appointments and vacancies.

Sec. 19. The Commissioners shall certify to the Auditor all appointments to places of employment in the classified civil service, and all vacancies occurring therein, whether by dismissal, resignation or death, and all findings made or approved by the Commission under the provisions of section twelve of this Article.

Sec. 20. Penalties for violation.

Sec. 20. The Commissioners shall have power to institute and prosecute legal proceedings for violations of any of the provisions of this Article.

ARTICLE XIV.

PARK COMMISSIONERS.

Sec. 1. Public parks. Boundaries of land. Board of Park Commissioners.

Section 1. The lands designated upon the map of the Outside Lands of the City and County, made pursuant to Order Number One Hundred, by the word "Park," extending from Stanyan street to the Pacific Ocean and known as Golden Gate Park; also the land fronting on Haight street, designated upon said map by the word "Park," and known as "Buena Vista Park"; also the lands designated upon said map by the word "Avenue," extending from Baker street westward until it crosses Stanyan street; also that certain highway bounded on the west by the Pacific Ocean, and designated upon said map as "Great Highway"; also "Mountain Lake Park"; also "Seal Rocks," as ceded to the City and County of San Francisco by Act of Congress; and all the other parks and squares in the City and County, and all the grounds surrounding public buildings in the City and County, and all parks and squares and public pleasure grounds hereafter acquired by the City and County shall be under the exclusive control and management of a Board of Commissioners, who shall be known and designated as Park Commissioners.

References. As to proposed constitutional amendment concerning the powers of San Francisco as to parks, etc., see Charter, ante, art. VI, chap. II, sec. 1, and note "Charter as a whole," post, p. 364.

Driveways around City Hall. Under this section, and secs. 5 and 6, post, of this article, the Board of Public Works has jurisdiction over driveways surrounding the City Hall: See Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 399.

Public parks, plazas, etc., in general. See Sawyer v. San Francisco, 50 Cal. 370; Hoadley v. San Francisco, 70 Cal. 320; 12 Pac. Rep. 125; Cohn v. Parcels, 72 Cal. 367; 14 Pac. Rep. 26; People v. Park and Ocean R. R. Co., 76 Cal. 156; 18 Pac. Rep. 141; San Francisco v. Itsell, 80 Cal. 57; 22 Pac. Rep. 74; Archer v. Salinas City, 93 Cal. 43; 28 Pac. Rep. 839. The City and County of San Francisco holds such property in trust for the public, and the municipal authorities have no power to dispose of it in any way: People v. Park and Ocean R. R. Co., 76 Cal. 156; 18 Pac. Rep. 141; San Francisco v. Itsell, 80 Cal. 57; 22 Pac. Rep. 74.

"Avenue." See act of April 4, 1870, Stats. 1869-70, p. 802.

"Buena Vista" Park. See act of April 4, 1870, Stats. 1869-70, p. 802.

"Golden Gate" Park. See act of April 4, 1870, Stats. 1869-70, p. 802; act of April 3, 1876, Stats. 1875-76, p. 861.

"Great Highway." See act of March 11, 1874, Stats. 1873-74, p. 333.

"Mountain Lake" Park. See act of March 11, 1874, Stats. 1873-74, p. 333.

Refugees. No tenancy rights. Refugees in the public squares have no tenancy rights, and may be summarily removed by the proper authorities, or by any citizen who can show that he is specially injured: Opinion of Judge Sturdevant of the Superior Court, Aug. 17, 1907.

Sec. 2. Successors in office.

Sec. 2. The Commissioners shall be successors in office of the Park Commissioners holding office in the City and County at the time this Charter shall go into effect by virtue of appointment under any statute of this State.

Sec. 3. Five Commissioners to be appointed by Mayor; term; no compensation.

Sec. 3. The Commissioners shall be five in number, one of whom must be an artist. They shall be appointed by the Mayor for a term of four years and shall receive no compensation for their services. They shall so classify themselves by lot that one of them shall go out of office at the end of one year, one at the end of two years, one at the end of three years, and two at the end of four years.

Sec. 4. Commissioners; organization; President; Secretary; rules; duties; meetings. Quorum; contracts; provisions of article, how governed.

Sec. 4. The Commissioners shall organize by electing one of their number President, and they may elect a Secretary who is not a member of the Board. The Board shall establish rules and regulations for its government and for the performance of its duties, and for the conduct of its officers and employees, and shall require adequate bonds from all of them, except laborers, for the faithful performance of their duties in such sums as may be fixed by it. Such bonds shall be approved by the Mayor and filed in the office of the Auditor. The person elected President shall hold his office for one year, or until his successor is elected.

The Board must hold regular meetings at least once in two weeks, and as many special meetings as it may deem proper.

Three of the Commissioners shall constitute a quorum for the transaction of business. No contract shall be entered into authorizing the expenditure of money without the approval of four of the Commissioners. Every contract exceeding five hundred dollars in amount shall be open to public competition, unless the Board shall determine in any given case to have the work done by day's labor. All the provisions of the Article in this Charter on the Department of Public Works relating to contracts shall be applicable to all contract work ordered by the Commissioners.

Procedure required of Park Commissioners. By this provision the Park Commissioners are required to follow the procedure laid down in the article upon the Public Works Department in the making of contracts, and have the same powers that are given to the Board of Public Works over all contract work which they may order: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 697, 698.

Sec. 5. Park ordinances. Penalty for violation of.

Sec. 5. The Commissioners may adopt ordinances for the regulation, use and government of the aforesaid parks, squares, avenues and grounds not inconsistent with the laws of the State of California or with this Charter. Such ordinances shall, within five days after their passage, be published for ten days, Sundays excepted, in the official newspaper. Any person violating any of such ordinances shall be deemed guilty of a misdemeanor, and shall be punished therefor, on conviction, in any court of competent jurisdiction. None of such ordinances shall be valid unless it receives the vote of four members of the Board. No ordinance shall be passed at the same meeting at which it is introduced, or at any other than a regular meeting. Such ordinances shall take effect in not less than ten days after their adoption.

Sec. 6. Commissioners to have full control of parks and squares; appointees; funds. Museum. No lease of parks; exception. Expositions in the park; conditions.

Sec. 6. The Commissioners shall have the complete and exclusive control, management and direction of the aforesaid parks, squares, avenues and grounds, and the exclusive right to erect, and to superintend the erection of, buildings and structures thereon; and to that end may employ and appoint superintendents, laborers, surveyors, engineers, and other officers and assistants, and prescribe and fix their duties, authority and compensation. They shall have the exclusive management and disbursement of all funds legally appropriated or received from any source for the support of said parks, squares, avenues and grounds.

The Board may accept from donors suitable articles for the Museum and Art Gallery situate in the aforesaid Golden Gate Park and shall manage and control said Museum and Art Gallery.

Except as provided in section nine of this Chapter, nothing in this section shall be so construed as to authorize the Commissioners to lease any part of any of said parks, squares, avenues and grounds to any person, company or corporation for any purpose; or to permit any person, company or corporation to build or maintain any structure on any part of said parks, squares, avenues or grounds, but this shall not inhibit the Board from leasing, for a period not greater than one year, such buildings as may be constructed by itself for the use of the public to such person, company or corporation who shall undertake to serve such use; and in every such lease the Board shall reserve the right to enter at all times into and upon the premises so leased, and shall make the condition that the building so leased shall be used for park-pleasure purposes only. No such building shall be constructed by the Board except it be within the objects and purposes for which said parks, squares, avenues and grounds were dedicated to the public.

Nothing, however, in this section contained shall inhibit the Board from permitting the use of a limited portion of any one of the aforesaid parks or squares for the purpose of conducting thereon a Fair or Exposition, under such conditions and restrictions as may be necessary to conserve the integrity of said parks and squares, and for a period not greater than six months, and so as not to interfere with the use of any of the same by the public for park-pleasure purposes; but no such permission shall ever be granted except such Fair or Exposition be of National, State or Municipal importance. None of the moneys in, or apportioned to, the Park Fund shall be used for the purposes of any such Fair or Exposition.

Exclusive management of parks. The Park Commissioners have the exclusive management of the parks; and it is for them alone to say what improvements shall be made, and how the general affairs of the municipal park system shall be conducted: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 313, 316.

Power to contract for supplies. The Board of Park Commissioners has an entirely independent power to contract for its own supplies and materials: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 697.

Sec. 7. Park Police.

Sec. 7. The Chief of Police shall, on the request of the Commissioners, detail such members of the Police Force of the City and County for service in said parks, squares, avenues and grounds as may be necessary for the enforcement of the law and for the proper observance of the ordinances of the Commissioners; and the Commissioners may provide a place of detention within either of said public places in which the persons arrested for violating any of the ordinances of the Board may be detained temporarily.

Reference. See supra, sec. 5 of this article.

Sec. 8. Donations, legacies, and bequests. Disposition of such.

Sec. 8. The Board may receive donations from persons and corporations and legacies and bequests for the improvement of said parks, squares, avenues and grounds. All moneys that may be derived from such donations, legacies and bequests, shall, unless otherwise provided by the terms of such gift, legacy, or bequest, be deposited in the treasury of the City and County to the credit of the Park Fund. The same may be withdrawn therefrom and paid out in the same manner as is provided for the payment of moneys legally appropriated for the support and improvement of such parks, squares, avenues and grounds. If the moneys derived from such gifts, bequests or legacies, shall at any time exceed in amount the sum necessary for immediate expenditures on said parks, squares, avenues and grounds, the Board shall invest all or a part of the same in interest-bearing bonds of the United States, or of the State of California or of any municipality thereof.

Reference. Compare sec. 6 of this article, ante.

Park Fund. Balance in, goes where. A balance in the Park Fund goes over into the Surplus Fund of the next year: See Charter, ante, art. III, chap. II, sec. 5: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 313, 315, 316.

It is clear that it could not have been the intention of the Charter-makers to give to the Board of Supervisors control over the Park Fund, or any portion thereof: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 697.

As to Park Fund, see Charter, ante, art. III, chap. II, sec. 2.

Sec. 9. State exposition building. Condition.

Sec. 9. The Board may lease to the State of California, on such terms as it may deem proper, a plot of ground in Golden Gate Park not more than seven hundred feet square, on which said State may erect and maintain an exposition building, in which may be exhibited the products of the several counties of the State and in which the collection made by the State Mining Bureau may be maintained and exhibited; but said lease shall be upon the express condition that no fee shall ever be charged for admission to said building.

Sec. 10. Works of art must be approved by Commissioners. Definition of "work of art." Commissioners to pass upon public structures. Monuments.

Sec. 10. Hereafter no work of art shall become the property of the City and County by purchase, gift or otherwise, unless such work of art or design of the same, together with a statement of the proposed location of such work of art, shall first have been submitted to and approved by the Commisisoners; nor shall such work of art, until so approved, be erected or placed in or upon, or allowed to extend over or upon, any street, avenue, square, park, municipal building or other public place belonging to the City and County. The Board may require a complete model of the proposed work of art to be submitted. The term "work of art" as used in this section shall apply to and include all paintings, mural decorations, stained glass, statues, bas-reliefs or other sculptures, monuments, fountains, arches or other structures of a permanent character, intended for ornament or commemoration. No existing work of art in the possession of the City and County shall be removed, relocated or altered in any way without the similar approval of the Board. When so requested by the Mayor, or the Supervisors, or the Board of Public Works, or the Board of Education, the Board of Park Commissioners shall act in a similar capacity, with similar powers, in respect of the designs of municipal buildings, bridges, approaches, gates, fences, lamps or other structures erected or to be erected upon land belonging to the City and County, and in respect of the lines, grades and plotting of public ways and grounds, and in respect of arches, bridges, structures and approaches which are the property of any corporation or private individual and which shall extend over or upon any street, avenue, highway, park or public place belonging to the City and County. This section shall not be so construed as to impair the power of the Park Commissioners to refuse their consent to the erection or acceptance of public monuments or memorials or other works of art of any sort within any park, square or public place in the City and County.

Sec. 11. Tax for park purposes. Limits of.

Sec. 11. The Supervisors shall provide all necessary money for the maintenance, preservation and improvement of said parks, squares, avenues and grounds, and to that end shall annually levy a tax on all property in the City and County not exempt from taxation, which shall not be less than five cents nor more than seven cents upon each one hundred dollars assessed valuation of said property.

ARTICLE XV.

BONDS OF OFFICIALS.

Sec. 1. Officers to give bonds. Approval by Mayor and Auditor. Must be recorded.

Section 1. Officers of the City and County, before entering upon the discharge of their official duties, shall respectively give and execute to the City and County such official bonds as may be required by law, ordinance, or this Charter. When the amount of any bond is not fixed by law or by this Charter, it shall be fixed by an ordinance of the Supervisors. All bonds, excepting those of the Mayor and Auditor, must be approved by the Mayor and Auditor; the bond of the Mayor must be approved by the Auditor, and the bond of the Auditor must be approved by the Mayor. The approval of every official bond must be indorsed thereon, and signed by the officers approving the same, after examination of the sureties, as hereinafter provided. Upon the approval of a bond it must be recorded, at the expense of the party giving the bond, in the office of the Recorder, in a book kept for that purpose, entitled Record of Official Bonds. The bond of the Auditor shall be filed and kept in the office of the County Clerk. The bonds of all other officers shall be filed and kept in the office of the Auditor.

Official bonds. See **Kerr's Cyc. Pol. Code,** §§ 947-987, and notes.

Sec. 2. Amount of bonds of each official.

Sec. 2. The following officers shall respectively execute official bonds to the City and County, with sureties, in the following sums:

Mayor, twenty-five thousand dollars; Auditor, fifty thousand dollars; Treasurer, one hundred thousand dollars; Tax Collector, one hundred thousand dollars; Assessor, fifty thousand dollars; County Clerk, fifty thousand dollars; Recorder, ten thousand dollars; Sheriff, fifty thousand dollars; Coroner, ten thousand dollars; City Attorney, ten thousand dollars; District Attorney, ten thousand dollars; Public Administrator, fifty thousand dollars; Superintendent of Public Schools, five thousand dollars; each Commissioner of Public Works, twenty-five thousand dollars; Clerk of the Supervisors, ten thousand dollars; each Supervisor, five thousand dollars: each School Director, five thousand dollars; each Fire Commissioner, ten thousand dollars; each Police Commissioner, five thousand dollars: each Election Commissioner, ten thousand dollars; Property Clerk of Police Department, ten thousand dollars; the Warrant and Bond Clerk, ten thousand dollars.

Reference. Under art. XI, sec. 8½, it was competent for the Charter to provide for the amount of bonds of county officers.

Salaries of Insanity Commissioners are not fixed by the Charter; no reference is made to such officers in the Charter; they hold under provisions of general law: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 343.

Sec. 3. Bonds must contain certain conditions. Sureties.

Sec. 3. City and County officers shall not be accepted as surety for each other on official bonds. Every bond shall contain a condition that the principal will faithfully perform all official duties then, or that may thereafter be, imposed upon or required of him by law, ordinance, or this Charter, and that at the expiration of his term of office he will surrender to his successor all property, books, papers, and documents that may come into his possession as such officer. Such bond must also be executed by two or more sureties who shall each justify in the amount required for said bond; but when the amount of the bond is more than five thousand dollars, the sureties may become severally liable for portions of not less than twenty-five hundred dollars. When there are more than two sureties, such sureties may justify in an amount which in the aggregate shall equal double the amount of said bond.

References. As to official bonds in general, see **Kerr's Cyc. Pol. Code,** §§ 947-987, and notes. As to form of bonds, see **Kerr's Cyc. Pol. Code,** § 958. As to condition of bonds, see **Kerr's Cyc. Pol. Code,** § 954, and sec. 6, infra, of this article. As to sureties for less than penal sum, see **Kerr's Cyc. Pol. Code,** § 956. That City and County officers must not become sureties, see **Kerr's Cyc. Pol. Code,** § 955, subd. 3.

Sec. 4. Qualifications of sureties.

Sec. 4. Every surety upon an official bond, other than lawfully authorized surety companies, must make an affidavit, which shall be indorsed upon such bond, that he is a resident and freeholder in the City and County, and worth in property situated in the City and County, exclusive of encumbrances thereon, double the amount of his undertaking over and above all sums for which he is already liable or in any manner bound, whether as principal, indorser or surety, and whether such prior obligation or liability be conditional or absolute, liquidated, or unliquidated, due or to become due. All persons offered as sureties on official bonds may be examined on oath as to their qualifications by the officers whose duty it is to approve the bond.

Sureties. As to justification of sureties, see **Kerr's Cyc. Pol. Code,** § 955. That surety companies may become sureties on undertakings and bonds, see **Kerr's Cyc. Code Civ. Proc.,** § 1056; **Kerr's Cyc. Pol. Code,** § 955.

Sec. 5. Additional bond.

Sec. 5. When under any of the provisions of this Charter, or of any ordinance, an official bond shall be required from an officer, the Supervisors may, by resolution, require an additional bond, whenever, in the opinion of such board, such bond or any surety thereto becomes insufficient; and such additional bond shall also be required when a surety to a bond shall die or cease to be a resident of the City and County.

Additional bonds. See **Kerr's Cyc. Pol. Code,** § 965.

Sec. 6. Liability.

Sec. 6. Every officer shall be liable on his official bond for the acts and omissions of his deputies, assistants, clerks, and employees, appointed by him, and of any and each of them, and every official bond shall contain such a condition.

Reference. See supra, sec. 3 of this article.

Sec. 7. Bonds of deputies and employees.

Sec. 7. Every board, department or officer may require of their deputies, clerks or employees bonds of indemnity with sufficient sureties for the faithful performance of their duties.

Bonds of deputies, clerks, etc. See **Kerr's Cyc. Pol. Code,** § 985. Such bonds are official bonds, within the meaning of the Political Code, though payable to the principal officer and not to the State: Hubert v. Mendheim, 64 Cal. 213. But compare San Francisco v. McAllister, 76 Cal. 246; 18 Pac. Rep. 246.

ARTICLE XVI.

MISCELLANEOUS.

Sec. 1. "City and County" defined.

Section 1. The words "City and County" wherever they occur in this Charter mean the City and County of San Francisco; and every department, board and officer, wherever either one of them is mentioned in this Charter, means a department, board or officer, as the case may be, of the City and County of San Francisco.

Sec. 2. Qualifications of all deputies and employees.

Sec. 2. All deputies, clerks, assistants and other employees of the City and County must be citizens of the United States, and must, during their respective terms of office or employment, actually reside in the City and County and must have so resided for one year next preceding their appointment.

"Actual residence." How determined. The rules laid down in §§ 52 and 1239, **Kerr's Cyc. Pol. Code,** together with sec. 12, art. XX, of the Constitution, apply in determining "actual residence," under this section of the Charter: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 203, 205.

Sec. 3. No absence from the State of any officer. Exception. Penalty.

Sec. 3. No officer of the City and County, except members of the Police Department acting under orders of the Chief thereof, shall absent himself from the State; but he may, once only during his term of office, so absent himself for a period of not more than sixty days upon the written permission of the Mayor so to do. Violation of this section shall be sufficient cause for the removal of any officer violating the same.

References. Absence from State: See **Kerr's Cyc. Pol. Code,** § 853; People v. Shorb, 100 Cal. 537; 35 Pac. Rep. 163.

Sec. 4. No one shall hold two salaried offices.

Sec. 4. Any person holding a salaried office under the

City and County, whether by election or appointment, who shall, during his term of office, hold or retain any other salaried office under the government of the United States, or of this State, or who shall hold any other salaried office connected with the government of the City and County, or who shall become a member of the Legislature, shall be deemed to have thereby vacated the office held by him under the City and County.

"Salaried officer." Extra or temporary clerk is not. It seems that a temporary (extra) clerk is not a "salaried officer," within the meaning of that phrase as used in this section. Such temporary clerk has no term of office, and has no greater power than that of a mere employee: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 582.

Same. Teacher in night-school. Justice of the Peace. A teacher in a night-school is not an officer of the City and County; and a Justice of the Peace may be a teacher in an evening-school without infringing the Charter rule: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 413.

Sec. 5. Limit of subordinates and supplies.

Sec. 5. No department, board or officer shall, under any circumstances, employ more subordinates than are specifically provided for in this Charter or buy supplies beyond the sum furnished therefor by the Supervisors.

Sec. 6. Officers shall not be interested in contracts or supplies or property of the city. Penalty.

Sec. 6. No Supervisor and no officer or employee of the City and County, shall be or become, directly or indirectly, interested in, or in the performance of, any contract, work, or business, or in the sale of any article, the expense, price or consideration of which is payable from the treasury; or in the purchase or lease of any real estate or other property belonging to, or taken by, the City and County, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of the City and County. If any person in this section designated shall, during the time for which he was elected or appointed, acquire an interest in any contract with, or work done for, the City and County, or any department or officer thereof, or in any franchise, right or privilege granted by the City and County, unless the same shall be devolved upon him by law, he shall forfeit his office, and be forever after debarred and disqualified from being elected, appointed or employed in the service of the City and County; and all such contracts shall be void, and shall not be enforceable against the City and County.

References. Certain officers are not to be interested in contracts: See **Kerr's Cyc. Pol. Code,** §§ 920, 4071. As to violation of laws prohibiting certain officers from being interested in contracts, see Const., art. XI, sec. 17; **Kerr's Cyc. Penal Code,** § 71. As to when officer shall be deemed guilty of misfeasance in signing a contract for work to be performed for the City and County, see Charter, ante. art. II, chap. III, sec. 1.

Contracts. Interest in. See Beaudry v. Valdez, 32 Cal. 269; Shakespear v. Smith, 77 Cal. 638; 20 Pac. Rep. 294; McConoughey v. Jackson, 101 Cal. 265; 35 Pac. Rep. 863. The law will not permit one who acts in a fiduciary capacity to deal with himself in his individual capacity: Andrews v. Pratt, 44 Cal. 309, 317; Wilbur v. Lynde, 49 Cal. 290. A member of the Board of Supervisors cannot be interested in any contract growing out of or connected with public works or improvements or other purposes: Domingos v. Board of Supervisors, 51 Cal. 608, 609. It is proper to reject or to refuse to consider a bid put in for a public improvement by a town official, who cannot lawfully contract therefor: Rice v. Board of Trustees, 107 Cal. 398; 40 Pac. Rep. 551.

Disqualification. Removal. The appointment and removal of a city officer is a municipal affair: Croley v. Board of Trustees, 119 Cal. 229; 51 Pac. Rep. 323.

Sec. 7. Promises or valuable consideration prohibited. Penalty.

Sec. 7. No officer or employee of the City and County shall give or promise to give to any other person, any portion of his compensation, or any money, or valuable thing, in consideration of having been, or of being, nominated, appointed, voted for, or elected to, any office or employment; and if any such promise or gift be made, the person making such gift or promise shall forfeit his office and employment, and be forever debarred and disqualified from being elected, appointed or employed in the service of the City and County.

Purity of Elections Act. See **Henning's General Laws,** p. 421.

Sec. 8. Bribing prohibited. Penalty.

Sec. 8. Any officer of the City and County who shall, while in office, accept any donation or gratuity in money, or other valuable thing, either directly or indirectly, from any subordinate or employee, or from any candidate or applicant for any position as employee or subordinate under him, shall forfeit his office, and be forever debarred and disqualified from holding any position in the service of the City and County.

Sec. 9. Annual reports.

Sec. 9. Every department, board and commission provided for in this Charter, except the Supervisors, shall render to the Mayor within one month after the end of each fiscal year a full report of all the operations of such department or board or commission for such year.

Sec. 10. "Vacancies" defined.

Sec. 10. An office becomes vacant when the incumbent thereof dies, resigns, is adjudged insane, convicted of felony, or of an offense involving a violation of his official duties, or is removed from office, or ceases to be a resident of the City and County, or neglects to qualify within the time prescribed by law, or within twenty days after his election or appointment, or shall have been absent from the State without leave for more than sixty consecutive days.

Absence from State. See **Kerr's Cyc. Pol. Code,** § 853. Vacancies, how they occur: See **Kerr's Cyc. Pol. Code,** § 996, and notes.

Conviction of felony. An official who has been convicted in the trial court of a felony is placed in a position which prevents him from performing the duties of his office, and the fact that he may, by means of an appeal, ultimately succeed in establishing his innocence does not entitle him, in the mean time, to hold a public office, the duties of which he cannot discharge: McKannay v. Horton, Cal. Supreme Court, Aug. 19, 1907.

Sec. 11. Liability for illegal payments.

Sec. 11. Every officer who shall approve, allow or pay any demand on the treasury not authorized by law, ordinance or this Charter, shall be liable to the City and County individually and on his official bond for the amount of the demand so illegally approved, allowed or paid.

Sec. 12. Custody of records.

Sec. 12. The departments, boards, commissioners and officers provided for in this Charter shall be entitled to the possession of all papers, books, documents, maps, plats, records and archives in the possession or under the control of those respectively who are superseded in office under this Charter by such departments, boards, commissioners and officers.

Sec. 13. Books and records to be open to inspection. Certified copies. Exception.

Sec. 13. All books and records of every office and department shall be open to the inspection of any citizen at any time during business hours. Certified copies or extracts from said books and records shall be given by the officer having the same in custody to any person demanding the same, and paying or tendering ten cents a folio of one hundred words for such copies or extracts; but the records of the Police Department shall not be subject to such inspection except permission be given by the Police Commissioners or by the Chief of Police.

Sec. 14. Office hours. Treasurer, 9 A. M. to 4 P. M. Other offices, 8:30 A. M. to 5 P. M. Tax Collector, until 9 P. M. for limited time.

Sec. 14. The Treasurer shall keep his office open for business every day, except legal holidays, from nine o'clock in the forenoon until four o'clock in the afternoon. Except where otherwise provided for by law, or by this Charter, all other public offices shall be kept open for business every day, except legal holidays, from half-past eight o'clock in the forenoon until five o'clock in the afternoon; and, in addition thereto, from the first day of November until the last Monday of December in each year the office of the Tax Collector shall be kept open until nine o'clock in the evening.

Sec. 15. Disqualifications.

Sec. 15. No person shall be eligible to or hold any office, or be clerk or deputy in any office or department, who has been found guilty of malfeasance in office, bribery or other infamous crime or who in any capacity has embezzled public funds.

Bribery. As to bribing members of Common Council, Boards of Supervisors, or Trustees, see **Kerr's Cyc. Penal Code,** § 165.

Sec. 16. Fiscal year, July 1st to June 30th.

Sec. 16. The fiscal year mentioned in this Charter shall commence on the first day of July and end on the thirtieth day of June following.

Fiscal year. It is doubtful whether the legislative power of a city having a freeholders' charter has a right to change the fiscal year to begin at any other time than that fixed by the Charter: See Const., art. XI, sec. 8, and act of March 26, 1895, Stats. 1895, p. 128.

Sec. 17. All moneys to be paid to Treasurer. Penalty.

Sec. 17. All moneys, assessments and taxes belonging to or collected for the use of the City and County, coming into the hands of any officer of the City and County, shall immediately be deposited with the Treasurer for the benefit of the funds to which they respectively belong. If such officer for twenty-four hours after receiving the same shall delay or neglect to make such deposit, he shall be deemed guilty of misconduct in office and may be removed.

Reference. The act of February 9, 1866, Stats. 1865-66, p. 66, concerning the regulation of fees in the City and County of San Francisco, was repealed by act of March 20, 1905: See Stats. 1905, p. 387.

Sec. 18. Suspensions and removals.

Sec. 18. Any elected officer, except Supervisor, may be suspended by the Mayor and removed by the Supervisors for cause; and any appointed officer may be removed by the Mayor for cause. The Mayor shall appoint some person to discharge the duties of the office during the period of such suspension.

Election Commissioners. Removal of. Where Election Commissioners of the City and County of San Francisco are accused by the grand jury with wilful, unlawful, and corrupt misconduct as such Commissioners, they may be removed by the Superior Court, although the power of such removal is vested by the Charter in the Mayor of said City and County: Roberts v. Superior Court, 147 Cal. 568; 82 Pac. Rep. 201.

Sec. 19. Procedure after suspension of elected officer.

Sec. 19. When the Mayor shall suspend any elected officer he shall immediately notify the Supervisors of such suspension and the cause therefor. If the Board is not in session he shall immediately call a session of the same in such manner as shall be provided by ordinance. The Mayor shall present written charges against such suspended officer to the Board and furnish a copy of the same to said officer, who shall have the right to appear with counsel before the Board in his defense. If by an affirmative vote of not less than fourteen members of the Board of Supervisors, taken by ayes and noes and entered on its record, the action of the Mayor is approved, then the suspended officer shall thereby be removed from office; but if the action of the Mayor is not so approved such suspended officer shall be immediately reinstated.

Sec. 20. Removal of appointed officer by the Mayor.

Sec. 20. When the Mayor shall remove an appointed officer from office, he shall immediately notify the Board of Supervisors of such removal, and furnish it a statement of the cause therefor, which statement shall be entered in the record of its proceedings.

Sec. 21. Removal of appointed deputies or employees.

Sec. 21. Unless otherwise provided by law or by this Charter, any officer, board or department authorized to appoint any deputy, clerk, assistant or employee, shall have the right to remove any person so appointed.

Sec. 22. Appointments to be in writing, in duplicate.

Sec. 22. All appointments of officers, deputies and clerks to be made under any provision of this Charter must be made in writing and in duplicate, authenticated by the person or persons, board or officer making the same. One of such duplicates must be filed with the Secretary of the Civil Service Commission and the other with the Auditor.

References. As to article on Civil Service, see Charter, ante, art. XIII. As to right of officials to appoint deputies, see **Kerr's Cyc. Pol. Code,** §§ 4111, 4112.

Sec. 23. Classification by lot to be recorded and filed.

Sec. 23. Wherever it is provided in this Charter that the members of any board, department or commission shall so classify themselves by lot that their terms of office shall expire at different times, such members shall, on the day of making such classification, cause the same to be entered in the records of their proceedings, and a copy thereof, certified by the Secretary thereof and signed by all of said members, shall be filed with the Clerk of the Supervisors. In every case such classification must be made at the first meeting of the Board.

Sec. 24. Powers of officers and boards to administer oaths, issue subpoenas, and to hear testimony. Contempt. Service of process.

Sec. 24. Every officer and every member of any board or committee provided for in this Charter shall have the power to administer oaths and affirmations, and every such board, officer or committee shall have power to issue subpœnas, to compel by subpœna the production of books, papers and documents, and to take and hear testimony concerning any matter or thing pending before any such board, officer or committee. If any person so subpœnaed neglect or refuse to appear, or to produce any book, paper or document, as required by such subpœna, or shall refuse to testify before any such board, officer or committee, or to answer any question which any officer or a majority of such board or committee shall decide to be proper or pertinent, he shall be deemed in contempt, and any such board, officer or committee shall have power to take the proceedings in that behalf provided by the general laws of this State. The Chief of Police must, on request of such officer or of any member of any such board or committee, detail a Police Officer or Officers to serve such subpœnas.

References. As to contempts, see **Kerr's Cyc. Code Civ. Proc.,** §§ 1209-1222. As to compelling the attendance of witnesses, see **Kerr's Cyc. Code Civ. Proc.,** § 128, subd. 6, and §§ 1991-1994. As to effect of disobeying a subpoena, or failing to appear in compliance with an undertaking, see **Kerr's Cyc. Penal Code,** §§ 1331, 1332.

Power to punish for contempt. A board of supervisors has power to punish for contempt: See **Kerr's Cyc. Pol. Code,** § 4047; and officers authorized to take the proof of instruments may punish for contempt: See **Kerr's Cyc. Civ. Code,** § 1201.

Secretary of Board of Public Works. No power to administer oaths. Under this section, the Secretary of the Board of Public Works does not have power, under the Charter, to administer oaths. While, for certain purposes, a secretary of a board is to be considered as an officer, he is not an officer in the sense in which that word is used in this section; namely, one having similar power and authority to that of the head of a department: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 232.

Sec. 25. Official newspaper.

Sec. 25. All publications provided for in this Charter must be made in the official newspaper only.

Sales for delinquent taxes. Publication. The Charter does not attempt to provide for publishing the list of properties to be sold, under the direction of the State Controller, for delinquent taxes. It does not provide that there shall be any provision in that regard whatever. That matter, as well as all the other duties of the Tax Collector, in such connection, are left entirely to general law. The only law requiring such publication is § 3897 of **Kerr's Cyc. Pol. Code:** Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 388, 389.

Sec. 26. Franchises not in use declared forfeited.

Sec. 26. All franchises and privileges heretofore granted by the City and County which are not in actual use or enjoyment, or which the grantees thereof have not in good faith commenced to exercise, are hereby declared forfeited and of no validity unless said grantees or their assigns shall, within six months after this Charter takes effect, in good faith commence the exercise and enjoyment of such privilege or franchise.

References. As to time allowed for commencing and completing work in order to hold franchise, see **Kerr's Cyc. Civ. Code,** § 502, and notes.

Sec. 27. Ordinances repealed.

Sec. 27. All ordinances or resolutions for the improvement of any street for which no contract shall have been entered into at the time this Charter takes effect are hereby repealed.

Sec. 28. Ordinances continued.

Sec. 28. All ordinances, orders and resolutions of the Supervisors of the City and County in force at the time this Charter takes effect, and not inconsistent therewith, shall continue in force until amended or repealed.

Sec. 29. Issuance of bonds for public buildings or improvements. Procedure and provisions. Public Building Fund.

Sec. 29. When the Supervisors shall determine that the public interest requires the construction or acquisition of any permanent building or buildings, improvement or improvements, land or lands, the cost of which in addition to the other expenses of the City and County will exceed the income and revenue provided for the City and County for any one year, they must by Ordinance submit a proposition or propositions to incur a bonded indebtedness for such purpose or purposes to the electors of the City and County at a special election to be held for that purpose only. All provisions of this Charter providing for the acquisition of public utilities, so far as the same are applicable, shall apply to the manner of submitting such proposition or propositions to the electors, to the limitations of said bonded indebtedness, to the issuance and character of the same, and to the time when and the kind of money in which said bonded indebtedness shall be payable. The proceeds of the sales of such bonds shall be paid into the treasury to the credit of the Public Building Fund. [Amendment approved, and in effect, February 5, 1903.]

Amended section. The amended section read as follows: Sec. 29. When the Supervisors shall determine that the public interest requires the construction or acquisition of any permanent municipal building or improvement, the cost of which in addition to the other expenses of the City and County will exceed the income and revenue provided for the City and County for any one year, they must by ordinance passed by the affirmative vote of not less than fourteen members of the Board, submit a proposition to incur a bonded indebtedness for such purpose to the electors of the City and County at a special election to be held for that purpose only. All the provisions of this Charter providing for the acquisition of public utilities, so far as the same are applicable, shall apply to the manner of submitting such proposition to the electors, to the limitations of said bonded indebtedness, to the issuance and character of the same, and to the time when and the kind of money in which said bonded indebtedness shall be payable. The proceeds of the sales of such bonds shall be paid into the treasury to the credit of the Public Building Fund.

References. See Const., art. XI, sec. 18; Charter, ante, art. II, chap. I, secs. 20, 21. As to the acquisition of public utilities, see Charter, ante, art. XII.

Construction of section. This provision evidently does not contemplate the holding of a bond election until the necessity for the public building or improvement has become manifest. It is not, therefore, proper to present to the people propositions for future improvements which the public interest does not now require. If, however, an improvement is now necessary, but it is not now possible definitely to ascertain what property will be available when bonds may be issued for the purpose of such improvement, it does not seem to be necessary to describe definitely the piece of property which the Board desires to obtain: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 701.

Bonds for municipal improvements. Reading art. II, chap. II, sec. 22, of the Charter, ante, with this section, and art. II, chap. I, sec. 21, ante, of the same instrument, and construing them in connection with each other, there seems to be no conflict between the provisions, and their meaning is quite plain. "Whenever the public interest requires the acquisition of any land, and its purchase will exceed the moneys available out of the income of any one year, the Supervisors 'must' submit the proposition to incur a bonded indebtedness for this purpose at a special election, held for such purpose only; but where funds are available from the income of any one year (so that a bonded indebtedness is not necessary), and where the purchase price will exceed the sum of fifty thousand dollars, the conditions are radically changed. The money is on hand and available, and there is to be submitted to the voter merely the question of the wisdom and propriety of buying the land. To resolve this question at a special election becomes an unnecessary expense, and it is therefore provided that it shall be determined at the municipal election next following": Law v. San Francisco, 144 Cal. 384, 392; 77 Pac. Rep. 1014.

"Improvement" includes schoolhouses, sewers, etc. All the provisions of the Charter, under familiar rules of construction, are to be taken and construed as a whole, and are to be construed harmoniously. Hence, under this section, and under art. II, chap. II, sec. 22, ante, a bonded indebtedness may be created for the purpose of acquiring permanent municipal buildings and improvements; and the phrase "improvement or improvements" includes the construction of schoolhouses, sewers, etc.: Law v. San Francisco, 144 Cal. 384, 389; 77 Pac. Rep. 1014.

City may bond itself for public school purposes. A city, as such, may bond itself for public school purposes, and this power extends to all cases where the object is in furtherance of, and not in derogation of and in conflict with, the general school system established by the State. The school system of the State is a matter of general concern, and not a "municipal affair." Hence, authority given to the city by its Charter to issue bonds for the erection of a schoolhouse within the city limits is not exclusive, and does not affect the separate and independent power conferred upon the Board of Trustees of the school district under the general school system of the State: Los Angeles City School District v. Longden, 148 Cal. 380, 383; 83 Pac. Rep. 246.

The city authorities are justified in calling for a bonded indebtedness for the erection of new schoolhouses, of improvements to existing schoolhouses, for the acquisition of land for these purposes, and of additional land for playgrounds of established schools, and the Charter provisions in this regard supersede the requirements of the General Improvement Act of 1901, Stats. 1901, p. 27, should conflict be found to exist between the two: Law v. San Francisco, 144 Cal. 384, 391; 77 Pac. Rep. 1014.

Bonds for library site. How to be voted upon. In case bonds are necessary to pay for a library site, the question of their issuance cannot be voted upon at a general election. This section of the Charter requires such matters to be submitted at a "special election to be held for that purpose only": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 551.

Land for park and boulevard purposes. This section, and art. II, chap. II, subd. 12, and art. XII, secs. 9 and 11, of the Charter, ante, provide a complete scheme for the acquisition of land for park and boulevard purposes, by an issuance of bonds, the proceeds thereof to be used for that purpose. But as this scheme is different from that provided for in the Park and Boulevard Act, no bonds can be issued for park and boulevard purposes under the Charter, unless the notice of election accords with the provisions of the Charter: Fritz v. San Francisco, 132 Cal. 373, 379; 64 Pac. Pep. 566.

Public Improvement Act. Superseding of. As the Charter provides a complete scheme for the acquisition of permanent municipal buildings and improvements, including schoolhouses, sewers, etc., by the creation of a bonded indebtedness, the Public Improvement Act is superseded by the Charter, and being superseded, it stands, as to the municipality, exactly the same as if it were repealed. No bonds can be issued under its provisions, for, as a law, it is dead to the city. Such bonds, therefore, if they can be issued at all, must be issued under the provisions of the Charter, unless their issuance has been authorized by statutory provisions: McHugh v. San Francisco, 132 Cal. 381; 64 Pac. Rep. 570. See also Law v. San Francisco, 144 Cal. 384, 391; 77 Pac. Rep. 1014.

Sec. 30. Duties of subordinates.

Sec. 30. Every assistant deputy or other subordinate of any board, department or officer, shall discharge any of the duties pertaining to such department, board or office as his chief may assign him to.

References. As to powers of deputies, see **Kerr's Cyc. Pol. Code,** § 865.

Sec. 31. Ineligibility to office.

Sec. 31. No member of the Board of Police Commissioners and no member of the Board of Fire Commissioners shall be eligible to any elective office while he is a member of such Board, or for one year thereafter.

References. As to Police Commissioners, see Charter, ante, art. VIII, chaps. I and II. As to Fire Commissioners, see Charter, ante, art. IX, chap. II.

Sec. 32. Members of the Police or Fire Departments not to participate in politics or conventions. Political assessments prohibited. Penalties.

Sec. 32. No member of the Board of Police Commissioners and no member of the Board of Fire Commissioners, and no officer, subordinate or employee of the Police Department or of the Fire Department, shall be a member of any partisan convention the purpose of which is to nominate candidates for office; nor shall either of them directly or indirectly electioneer, by soliciting votes or otherwise, for or against any candidate for office at any election, or for or against any candidate for nomination before any political convention, or for or against any candidate for delegate to such convention at any primary election; nor shall either of them be a member of any committee, club, or organization the purpose of which is to nominate or indorse candidates for office at any election; nor in any way attempt to influence or control such committee, club or organization, while nominating or indorsing said candidates; nor take any part in the control, management or distribution of the political patronage of any public officer; nor shall any member of either of said Boards, or any officer, subordinate or employee of either of said departments directly or indirectly attempt to control or in any manner influence the action of any officer, subordinate or employee of either of said departments at any general, special or primary election. And no officer, subordinate or employee of either of said departments shall levy, collect or pay any amount of money as an assessment or contribution for political purposes. Any person violating any of the provisions of this section shall be removed forthwith from his office or employment. If the violation be by a member of either of said Boards the Mayor must remove such member; and if by an officer, employee or subordinate of either of said departments, then the Board whose officer, employee or subordinate has been guilty of such violation, must remove such officer, employee or subordinate; and if such Board fail or refuse to make such removal, then the Mayor must remove all members of the Board who have so failed or refused.

Sec. 33. Overtime.

Sec. 33. No deputy, clerk or other employee of the City and County shall be paid for a greater time than that covered by his actual service.

Sec. 34. Salaries full compensation.

Sec. 34. The salaries provided in this Charter shall be in full compensation for all services rendered, and every officer shall pay all moneys coming into his hands as such officer, no matter from what source derived or received, into the treasury of the City and County within twenty-four hours after receipt of the same.

Expert is entitled to compensation when. If the services of a person, because of expert knowledge as a physician, or by reason of experiments or examinations made, are regarded as valuable on a matter totally dissociated from his official work, he is entitled to compensation therefor: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 343.

Sec. 35. Additional clerks or employees.

Sec. 35. When any officer, board or department shall require additional deputies, clerks or employees, application shall be made to the Mayor therefor, and upon such application the Mayor shall make investigation as to the necessity for such additional assistance; and if he find the same necessary he may recommend to the Supervisors to authorize the appointment of such additional deputies, clerks or employees; and thereupon the Supervisors, by an affirmative vote of not less than fourteen members, may authorize such appointments, and provide for the compensation of such appointees, subject to the limitations contained in this Charter, and subject to the provisions of Article XIII thereof.

Reference. Compare Charter, ante, art. XIII, sec. 11.

Appointment by Tax Collector. Civil Service. Board of Supervisors. As the Tax Collector has power to appoint, outside of the Civil Service list, but one cashier for his department (see sec. 11 of this article and sec. 1, chap. V, art. IV), an additional cashier, if allowed by the Board of Supervisors, must be appointed in conformity with the Civil Service article: See Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 653, 654.

Japanese interpreter for Police Court. Power to appoint. Under this section, and sec. 8½, art. XI, of the Constitution, if given a broad interpretation, the Board of Supervisors would have the power to appoint a Japanese interpreter for the Police Courts: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 345, 346.

Sec. 36. First appointments by Mayor. Beginning and expiration of terms of office.

Sec. 36. At any time between the first day of December, in the year one thousand eight hundred and ninety-nine, and the first day of January, in the year nineteen hundred, the person who, at the election held under this Charter in the month of November next preceding, has been elected the Mayor of the City and County, shall make all the appointments provided by this Charter to be made by him, and all the persons so appointed shall thereupon qualify as in this Charter provided, and shall take office at the hour of noon on the first Monday after the first day of January in the year nineteen hundred, and all boards, commissions and officers of the City and County holding by appointment under existing laws shall hold office no longer than said last aforesaid time.

References. As to Department of Elections, see Charter, ante, art. XI.

Sec. 37. Balances in the several funds to be transferred to their successive funds under the Charter. General Fund. First six months under Charter. Special provision for payments from General Fund. "Existing municipality" defined.

Sec. 37. The balance remaining in the School Fund at the time this Charter takes effect shall forthwith be transferred to the Common School Fund created by this Charter. The balance remaining in the Library Fund at the time this Charter takes effect shall forthwith be transferred to the Library Fund created by this Charter. The balance remaining in the Park Improvement Fund at the time this Charter takes effect shall forthwith be transferred to the Park Fund created by this Charter. The balance remaining in the Unapportioned Fee Fund at the time this Charter takes effect shall forthwith be transferred to the Unapportioned Fee Fund created by this Charter. The balance remaining in the Police Relief and Pension Fund at the time this Charter takes effect shall forthwith be transferred to the Police Relief and Pension Fund created by this Charter. The balance remaining in the Surplus Fund at the time this Charter takes effect shall forthwith be transferred to the Surplus Fund created by this Charter. The balance remaining in the Special Deposit Fund at the time this Charter takes effect shall forthwith be transferred to the Special Deposit Fund created by this Charter. The balance remaining in the General Fund at the time this Charter takes effect, the balance remaining in the Street Light Fund at the time this Charter takes effect, the balance remaining in the Street Department Fund at the time this Charter takes effect, the balance remaining in the Police Contingent Fund at the time this Charter takes effect, the balance remaining in the Pound Fee Fund at the time this Charter takes effect, and the balance remaining in the Special Fee Fund at the time this Charter takes effect, shall each and every of them be forthwith transferred to the General Fund created by this Charter. Out of the said General Fund shall be paid, as in this section hereinafter provided, all the expenses of the various departments of the City and County, except such expenses as are by this Charter to be paid out of the Funds specifically provided for the payment of such expenses. For the six months ending on the thirtieth day of June, in the year nineteen hundred, each and every of said departments shall expend the moneys set apart to each of them by the Board of Supervisors of the existing municipality. So much of said moneys set apart by said Board of Supervisors to the Superintendent of Public Streets, Highways and Squares for the fiscal year ending on said thirtieth day of June, in the year nineteen hundred, as shall remain unexpended at the time this Charter takes effect, shall be expended during said six months by the Board of Public Works in the operations of the department committed to its charge. All the expenses of the City and County which are not to be paid out of specific funds shall be paid during said six months out of the General Fund. Should the moneys set apart by the Board of Supervisors of the existing municipality to any department of the City and County become or be exhausted at any time during said six months, or should any department created by this Charter have no money specifically provided for it during said six months, then in each such case the expenses thereof shall be paid out of the General Fund, notwithstanding anything contained in sections six and seven of Chapter I of Article III of this Charter. Such pensions as may accrue to firemen under Article IX of this Charter during said six months shall be paid out of the General Fund. The existing municipality mentioned in this section is the existing municipality of the City and County of San Francisco, and the several funds which are to be transferred as in this section provided are funds of said existing municipality. All the funds of said existing municipality not mentioned in this section, and which are authorized by law, shall be continued in the treasury until the necessity for their continuance ceases.

References. As to the several funds, see Charter, ante, art. III, chap. II.

"St. Mary's Park" moneys. The one hundred and twenty-five thousand dollars set aside by the Board of Supervisors for the purpose of acquiring "St. Mary's Park" properties was "raised" for the purpose of purchasing this property, and not for general expenses. It constitutes a fund authorized by law, which "must be continued in the treasury until the necessity for its continuance ceases": Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 249.

Sec. 38. Balances of unnecessary funds.

Sec. 38. When the necessity for maintaining any Fund of the City and County in existence at the time this Charter takes effect has ceased to exist, and a balance remains in such Fund, the Supervisors shall so declare by ordinance, and upon such declaration such balance shall be forthwith transferred to the General Fund.

References. As to the several funds, see Charter, ante, art. III, chap. II.

SCHEDULE.

This Charter shall be published for twenty days in The San Francisco Call and in the Daily Report, daily newspapers of general circulation in the City and County of San Francisco, and after such publication, viz.: on Thursday, the twenty-sixth day of May, in the year one thousand eight hundred and ninety-eight, it shall be submitted to the qualified electors of said City and County of San Francisco, at a special election which shall be held on that day, for the sole purpose of voting upon the adoption of the same; and if a majority of the qualified electors of said City and County voting at said election shall ratify the same it shall be submitted to the Legislature of the State of California for its approval or rejection. If the Legislature shall approve the same, it shall take effect and be in force, except as hereinafter otherwise provided, on and after the hour of noon on the first Monday after the first day of January in the year nineteen hundred, and shall thereupon become the Charter and organic law of the City and County of San Francisco, and shall supersede the existing Charter of said City and County, and all amendments thereof, and all laws inconsistent with this Charter.

The form of ballots at said election shall be as follows:

FOR THE NEW CHARTER, YES.
FOR THE NEW CHARTER, NO.

For the sole purposes of the election of the officers directed in this Charter to be elected by the people, this Charter shall take effect on and after its approval by the Legislature, and the election of such officers shall be managed, conducted and controlled by the Board of Election Commissioners in and for said City and County in office at the time of such election.

And for the sole other purpose of the Mayor elected under this Charter making the appointments provided in this Charter to be made by him, and of the qualification of the persons so appointed, this Charter shall take effect on the first day of December, in the year one thousand eight hundred and ninety-nine.

Be it Known, That the City and County of San Francisco, containing a population of more than two hundred thousand inhabitants, on the twenty-seventh day of December, in the year one thousand eight hundred and ninety-seven, and under and in accordance with the provisions of Section 8, of Article XI, of the Constitution of this State, did elect the undersigned a Board of Fifteen Freeholders, to prepare and propose a Charter for said City and County; and we, the members of said Board, in pursuance of such provisions of the Constitution, and within a period of ninety days after such election, have prepared and do propose the foregoing, signed in duplicate, as and for the Charter for said City and County of San Francisco.

In Witness Whereof, We have hereunto set our hands in duplicate, this twenty-fifth day of March, in the year one thousand eight hundred and ninety-eight.

JOSEPH BRITTON, President,
JEROME A. ANDERSON,
JAMES BUTLER,
H. N. CLEMENT,
A. COMTE, JR.,
ALFRED CRIDGE,
L. R. ELLERT,
ISIDOR GUTTE,
P. H. McCARTHY,
JOHN NIGHTINGALE, JR.,
JOHN C. NOBMANN,
JOSEPH O'CONNOR,
LIPPMANN SACHS,
EDWARD R. TAYLOR,
A. W. THOMPSON.

Attest: J. RICH'D FREUD,
Secretary.

APPROVAL OF CHARTER.

Assembly Concurrent Resolution No. 6, approving the Charter of the consolidated City and County of San Francisco, a municipal corporation, in the State of California, voted for and ratified by the qualified voters of said City and County, at a special election held therein for that purpose, on the twenty-sixth day of May, 1898.

[Adopted January 26, 1899.]

Whereas, The consolidated City and County of San Francisco, a municipal corporation, in the State of California, is now, and was at all the times herein referred to, a consolidated city and county containing a population of more than two hundred thousand inhabitants; and

Whereas, At a special municipal election, duly held in said City and County on the twenty-seventh day of December, one thousand eight hundred and ninety-seven, in accordance with law and the provisions of section eight of article eleven of the Constitution of said State, a Board of fifteen Freeholders, duly qualified, was elected in and by said City and County, and by the qualified electors thereof, to prepare and propose a Charter for said City and County; and

Whereas, The same was, on the twenty-fifth day of March, one thousand eight hundred and ninety-eight, signed in duplicate by all the members of said Board of fifteen Freeholders, and was, on said day, returned, one copy thereof to the Mayor of said City and County, and the other to the County Recorder of said City and County; and

Whereas, Such proposed Charter was then published in two daily newspapers of general circulation in said City and County of San Francisco, to wit: San Francisco Call and Daily Report, for more than twenty days, such publication in each instance having commenced within twenty days after the completion of said Charter; and

Whereas, Said Charter was, within not less than thirty days after the completion of said publication, submitted by the Mayor and Board of Election Commissioners of said City and County of San Francisco, to the qualified electors of said City and County at a special election, previously duly called and thereafter held therein, on the twenty-sixth day of May in the year one thousand eight hundred and ninety-eight; and

Whereas, The returns of said election were duly canvassed by the said Mayor and Board of Election Commissioners of said City and County of San Francisco; and

Whereas, At said election a majority of such qualified electors of said City and County, voting at such special election, did vote in favor of and ratify said Charter so proposed; and

Whereas, Said Mayor and Board of Election Commissioners, after canvassing said returns, duly found and declared that a majority of such qualified electors voting at said special election had voted for and ratified said Charter; and

Whereas, The same is now submitted to the Legislature of the State of California, for its approval or rejection as a whole, without power of alteration or amendment, in accordance with the provisions of section eight of article eleven of the Constitution of said State; and

Whereas. The said Charter so ratified is in the words and figures following, to wit:

CHARTER PREPARED AND PROPOSED FOR THE CITY AND COUNTY OF SAN FRANCISCO.

By the Board of Freeholders elected December 27. 1897, in pursuance of the provisions of Section 8, Article XI, of the Constitution of the State of California.

[Here follows a copy of the Charter.]

State of California, }
City and County of San Francisco, } ss.

This is to certify that we. James D. Phelan, Mayor of the City and County of San Francisco, and Thomas J. Glynn, County Recorder of said City and County, have compared the foregoing proposed and ratified Charter with the duplicates mentioned therein, and find that the same is an exact copy thereof; and we further certify that the facts set forth in the preamble preceding said Charter herein are true.

Dated, San Francisco, Cal., December thirtieth, eighteen hundred and ninety-eight.

JAMES D. PHELAN,
Mayor of the City and County of San Francisco.
THOS. J. GLYNN,
County Recorder of the City and County of San Francisco.

Now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring (a majority of all the members elected to each house voting for and concurring herein), that said Charter of the City and County of San Francisco, as presented to, and adopted and ratified by, the qualified electors of said City and County, be and the same is hereby approved as a whole, for and as the Charter of said City and County of San Francisco.

APPROVAL OF AMENDMENTS TO CHARTER.

Senate Concurrent Resolution No. 5, approving seven certain amendments to the Charter of the City and County of San Francisco, State of California, voted for and ratified by the electors of said City and County of San Francisco at a special election held therein for that purpose on the fourth day of December, 1902.

[Adopted February 5, 1903.]

Whereas, The City and County of San Francisco, State of California, contains a population of over three hundred and forty thousand inhabitants, and has ever since the eighth day of January in the year nineteen hundred and is now organized and acting under a Freeholders' Charter adopted under and by virtue of section eight of article eleven of the Constitution of the State of California, which Charter was duly ratified by the qualified electors of said City and County at an election held for that purpose on the twenty-sixth day of May, eighteen hundred and ninety-eight, and approved by the Legislature of the State of California on the twenty-sixth day of January, eighteen hundred and ninety-nine (Statutes of 1899, page 241), and which Charter has never been amended; and

Whereas, The legislative authority of said City and County, namely, the Mayor and the Board of Supervisors thereof, duly proposed to the qualified electors of the City and County of San Francisco eight certain amendments to the Charter of said City and County by the passage and approval of the seven following ordinances of said City and County, to wit:

Ordinance No. 526, entitled "Describing and setting forth proposals, to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County of San Francisco by amending Sections 1, 2, 3, 4, 6, 7 and 8 of Article XII thereof, by repealing Section 5 of said Article, and by renumbering

Sections 6, 7, 8, 9, 10, 11, 12, 13 and 14 of said Article so that they shall be known respectively as Sections 5, 6, 7, 8, 9, 10, 11, 12 and 13 of said Article XII, all relating to the acquisition of public utilities by the City and County, and by amending Section 29 of Article XVI of said Charter, relating to the construction and acquisition of municipal improvements by the City and County,'' passed July 14th, 1902, and approved July 21st, 1902.

Ordinance No. 527, entitled ''Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 21 of Chapter I of Article VI of said Charter relative to contracts made and entered into by the Board of Public Works of said City and County for work or improvements authorized or ordered by the Supervisors of said City and County,'' passed July 14th, 1902, and approved July 21st, 1902.

Ordinance No. 528, entitled ''Describing and setting forth proposals to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Sections 2, 4 and 16, respectively, of Chapter II of Article VI of said Charter, relating to street work and street improvement in said City and County,'' passed July 14th, 1902, and approved July 21st, 1902.

Ordinance No. 529, entitled ''Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County of San Francisco by amending Section 1, Chapter IV, Article IV of said Charter, relating to the salary of the Assessor,'' passed July 14th, 1902, and approved July 21st, 1902.

Ordinance No. 530, entitled ''Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County of San Francisco by amending Section 29 of Chapter II, Article VI of said Charter, relating to the cleaning and sprinkling of the public streets,'' passed July 14th, 1902, and approved July 21st, 1902.

Ordinance No. 535, entitled ''Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County of San Francisco by amending Section 1, Chapter II, Article II, of said Charter, by adding a new subdivision to be known as Subdivision 36, relating to the relief of aged, indigent and infirm exempt firemen who served in the Volunteer Fire Department between the years 1850 and 1866,'' passed July 21st, 1902, and approved July 26th, 1902.

Ordinance No. 543, entitled ''Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Subdivision 27, Section 1, Chapter II, Article II of said Charter, relating to the regulation of street railroads, tracks and cars,'' passed August 4th, 1902, and approved August 9th, 1902, and

Whereas, Said seven ordinances aforementioned containing said eight proposed amendments to said Charter were in accordance with the provisions of section eight of article eleven of the Constitution of the State of California, published for twenty days, after their passage and approval, in The Evening Post, a daily newspaper of general circulation in the City and County of San Francisco, and the official newspaper of said City and County: and

Whereas, The said legislative authority of said City and County, did by Ordinance No. 558, entitled ''Calling a special election for the purpose of submitting to the qualified electors of the City and County of San Francisco, eight certain proposals to amend the Charter of said City and County,'' passed October 13th, 1902, and approved October 13th, 1902, called a special election to be held on Thursday, the fourth day of December, nineteen hundred and two, for the purpose of submitting to the qualified electors of said City and County said eight proposed amendments to said Charter; and

Whereas, Said special election was held in said City and County of San Francisco on the said fourth day of December, 1902, which day was more than forty days after said proposed amendments had been published for twenty days in The Evening Post newspaper; and

Whereas, On the eighth, ninth and tenth days of December, 1902, at meetings duly convened in accordance with law and the Charter of the City and County of San Francisco, the Board of Election Commissioners of the said City and County duly and regularly canvassed the returns of said special election, and duly declared the results thereof, said Board being by law and the Charter authorized to conduct, manage and control the holding of elections and all matters pertaining to elections in said City and County, and

Whereas, At said special election so held on the fourth day of December, 1902, seven of said proposed amendments were ratified by a majority (and more than three-fifths) of the electors voting thereon, and one of said proposed amendments received less than a majority of the votes of said electors, and

Whereas, Thereafter, to wit, on the fifteenth day of December, 1902, the said Board of Election Commissioners duly filed with the Board of Supervisors the "Official Statement of votes polled at the special election held in the City and County of San Francisco, State of California, on Thursday, the fourth day of December, A. D. 1902, for Charter Amendments," and also filed a duplicate thereof in the Office of the Secretary of the State of California, and

Whereas, The said seven amendments so ratified by the electors of the City and County of San Francisco at said election are now submitted to the Legislature of the State of California for approval or rejection as a whole without power of alteration or amendment, in accordance with section eight of article eleven of the Constitution of the State of California, and are in words and figures as follows, to wit:

AMENDMENTS TO THE CHARTER OF THE CITY AND COUNTY OF SAN FRANCISCO, RATIFIED BY A MAJORITY (AND MORE THAN THREE-FIFTHS) OF THE ELECTORS VOTING AT THE SPECIAL ELECTION HELD FOR THAT PURPOSE ON THURSDAY, THE FOURTH DAY OF DECEMBER, 1902.

[Here follows a copy of the amendments.]

State of California, }
City and County of San Francisco, } ss.

This is to certify that we, E. E. Schmitz, Mayor of the City and County of San Francisco, and Chas. W. Fay, Clerk of the Board of Supervisors of said City and County, have compared the foregoing proposed and ratified amendments to the Charter of the said City and County of San Francisco with the original ordinances proposing such amendments and submitting the same to the electors of said City and County at a special election called for that purpose on Thursday, the fourth day of December, nineteen hundred and two, and find that the foregoing is a full, true, correct and exact copy thereof, and we further certify that the facts set forth in the preamble preceding said amendments to said Charter are and each of them is true.

In Witness Whereof, We have hereunto set are [our] hands and cause the same to be authenticated by the seal of said City and County of San Francisco, this 14th day of January, nineteen hundred three.

E. E. SCHMITZ,
Mayor of the City and County of San Francisco.
[Seal] CHAS. W. FAY,
Clerk of the Board of Supervisors of the City and County of San Francisco.

Now, therefore, be it

Resolved, by the Senate of the State of California, the Assembly thereof concurring (a majority of all of the members elected to each house voting for and concurring herein), That said amendments to the Charter of the City and

County of San Francisco as proposed to and adopted and ratified by the electors of said City and County be and the same are, and each of them is, hereby approved as a whole without amendment or alteration, for and as amendments to, and as part of the Charter of the City and County of San Francisco.

THE CHARTER AS A WHOLE — PARAMOUNT LAW.

City and County of San Francisco. The City of San Francisco was created by the act of April 15, 1850, Stats. 1850, p. 223: Kahn v. Sutro, 114 Cal. 316, 321; 46 Pac. Rep. 87. In 1856 the City and County of San Francisco were consolidated by what is commonly known as the Consolidation Act: See act of April 19, 1856, Stats. 1856, p. 145; Kahn v. Sutro, 114 Cal. 316, 321; 46 Pac. Rep. 87. The City and County survived the new Constitution of 1879, and thus continued by law to be governed by the Consolidation Act until the electors should adopt a Charter, or elect to become incorporated under general laws: Desmond v. Dunn, 55 Cal. 242. The present "City and County of San Francisco" is therefore a continuation of the former municipal corporation known as the City of San Francisco: Woods v. Election Commissioners, 58 Cal. 561, 563.

The City and County of San Francisco is regarded as one of the counties of the State: Kahn v. Sutro, 114 Cal. 316, 322; 46 Pac. Rep. 87; but its inhabitants are not invested with county government: Kahn v. Sutro, 114 Cal. 316, 332; 46 Pac. Rep. 87. It is politically regarded as a municipal corporation, but in matters of government it is regarded as a city: Wood v. Election Commissioners, 58 Cal. 561; Kahn v. Sutro, 114 Cal. 316, 332; 46 Pac. Rep. 87. San Francisco is therefore both a city and a county: Kahn v. Sutro, 114 Cal. 316, 326; 46 Pac. Rep. 87. The territory over which the municipal government is exercised is a county, and for those purposes for which county officers exercise authority, not derived from the Charter and not connected with municipal government, the officers of such territory are properly termed "county officers": Kahn v. Sutro, 114 Cal. 316; 46 Pac. Rep. 87; Miller v. Curry, 113 Cal. 644, 646; 45 Pac. Rep. 877. The term "city," when that word is used in the Constitution or statutes of the State, includes the City and County of San Francisco: Morgan v. Menzies, 60 Cal. 341, 347.

Freeholders. Right to prepare and propose Charter. Authority to cause a Board of Freeholders to be elected to frame a Charter for the City and County of San Francisco was not vested in the Board of Supervisors, but in the Board of Freeholders: People v. Hoge, 55 Cal. 612, 616. The Board of Election Commissioners of the City and County had a right to submit the Charter of such City and County to the electors of the municipality: People v. Hoge, 55 Cal. 612, 617. Legislative action was not necessary to enable the inhabitants of the City and County of San Francisco to act, under sec. 8, art. XI, of the Constitution, in the matter of framing a Charter: People v. Hoge, 55 Cal. 612, 618. Thirteen out of the fifteen Freeholders, they being a majority of all the members of the Board, were competent to organize and act as the Board of Freeholders, and had a lawful right to prepare and propose a charter for the City and County of San Francisco: People v. Hecht, 105 Cal. 621; 38 Pac. Rep. 941.

Adoption of Charter. The present Charter of the City and County of San Francisco was prepared and proposed by the Board of Freeholders elected on December 27, 1897, in pursuance of the provisions of sec. 8, art. XI, of the Constitution of the State of California. The Charter was adopted by the Board of Freeholders on March 25, 1898. It was ratified by a vote of the people, at a special election held for that purpose on May 26, 1898, and was approved by the legislature of the State on January 26, 1899: See Assembly Concurrent Resolution No. 6, Stats. 1899, pp. 241, 242. For the sole purposes of the election of certain officers, the new Charter went into effect on and was in force after its approval by the legislature: See Schedule, ante; but it took full force and effect on January 8, 1900: Fritz v. San Francisco, 132 Cal. 373, 375; 64 Pac. Rep. 566; Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), p. 19.

Recording of Charter. After a charter has been ratified and approved, the Constitution requires that a copy thereof, properly certified and authenticated, shall, after being recorded in the Recorder's office, be deposited in the archives of the city: Const., art. XI, sec. 8. It appears that a duplicate of the Charter of the City and County of San Francisco was delivered by the Board of Freeholders to the Recorder of the City and County on March 26, 1898, and its receipt acknowledged by an indorsement thereon, signed "Thos. J. Glynn, Recorder," etc., "By J. G. Noonan, Deputy"; but it further appears that this duplicate, and the book in which it was recorded, were in the safe of the County Recorder and were destroyed in the great conflagration of April 18, 1906. Compare People v. Gunn, 85 Cal. 238, 245, 250; 24 Pac. Rep. 718.

Amendment of Charter. For procedure and law concerning amendments of the Charter, see Charter, ante, art. II, chap. I, sec. 22, note. The Constitution provides a procedure for the amendment of freeholders' charters: Const., art. XI, sec. 8; and such mode is exclusive. One mode of amendment is commanded, and all others are prohibited: Blanchard v. Hartwell, 131 Cal. 263, 265; 63 Pac. Rep. 349. On June 12, 1906, there was adopted a resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending sec. 8 of art. XI thereof, relating to the amendment, during the period of two years, of the charters of the City and County of San Francisco and the city of San Jose without ratification by the legislature; but we are not aware that anything further has been done in the matter: See Senate Constitutional Amendment No. 2, Stats. 1906, p. 88. This amendment was carried at the following general election, November 6, 1906. Since p. 155, ante, was printed, we have learned that the constitutional amendment there referred to was lost at the following general election, November 6, 1906.

Adoption of amendments. The amendments to the Charter of the City and County of San Francisco given in the preceding pages were voted for and ratified by the electors at a special election held for that purpose on December 4, 1903, and went into effect on February 5, 1903, the date of the approval of said amendments by the legislature of the State of California: See Senate Concurrent Resolution No. 5, Stats. 1903, p. 583.

Effect of the Charter. The Constitution provides that, upon the adoption of such a charter, "it shall become the charter of such city, or city and county, and shall become the organic law thereof, and supersede any existing charter, and all amendments thereof, and all laws inconsistent with such charter": Const., art. XI, sec. 8; Sheehan v. Scott, 145 Cal. 684, 688; 79 Pac. Rep. 350. But the provision that the charter shall supersede "all laws inconsistent with such charter" is limited by the provision that it shall, except in municipal affairs, be "subject to and controlled by general laws": Const., art. XI, sec. 6.

The City Charter, in municipal affairs, is paramount to general laws: Odd Fellows' Cem. As. v. San Francisco, 140 Cal. 226; 73 Pac. Rep. 987; Matter of Dodge, 135 Cal. 512; 67 Pac. Rep. 973. But it cannot be superior to the Constitution itself, and nothing contained in such Charter can, in any way, affect a grant of power conferred by the Constitution: Odd Fellows' Cem. As. v. San Francisco, 140 Cal. 226, 230; 73 Pac. Rep. 987.

The new Charter superseded the Park and Boulevard Act of March 19, 1889, Stats. 1889, p. 361, the act being inconsistent with the Charter: Fritz v. San Francisco, 132 Cal. 373; 64 Pac. Rep. 566. It also superseded the Public Improvement Act, Stats. 1901, p. 27; McHugh v. San Francisco, 132 Cal. 381; 64 Pac. Rep. 570; Law v. San Francisco, 144 Cal. 384, 391; 77 Pac. Rep. 1014. It also superseded conflicting state laws on the subject of Public Health: People v. Williamson, 135 Cal. 415; 67 Pac. Rep. 504.

General laws. What are. The following are general laws: An act to provide for the improvement of streets, etc., and the construction of sewers within municipalities: Thomason v. Ashworth, 73 Cal. 73; 14 Pac. Rep. 615; Thomason v. Ruggles, 69 Cal. 465; 11 Pac. Rep. 20. The general provisions of the Police Court as to the control of schools by the Board of Education: Kennedy v. Board of Education, 82 Cal. 483, 492; 22 Pac. Rep. 1042. An act to provide for the laying out, opening, etc., of any street, etc., within municipalities: Davies v. Los Angeles, 86 Cal. 37; 24 Pac. Rep. 771. An act providing for a Police Court in each of the incorporated cities and counties, and counties, cities, and towns of the State: In re Carrillo, 66 Cal. 3; 4 Pac. Rep. 695.

General laws. What are not. The following have been held not to be general laws: An act providing a special method of collecting fees in cities and cities and counties having a population of over one thousand inhabitants: Bauer v. Williams, 118 Cal. 401; 50 Pac. Rep. 691. An act giving discretion to the judge of a court in the counties of a specified class as to the allowance of witness fees in criminal cases: Turner v. Siskiyou, 109 Cal. 332; 42 Pac. Rep. 434. The Primary Election Law, which was confined it its operation and effect to counties of the first and second class: Marsh v. Supervisors, 111 Cal. 368; 43 Pac. Rep. 975.

Municipal affairs. What are. Under the amendment of November 3, 1896, to sec. 6, art. XI, of the Constitution, all "cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted, by authority of this Constitution, except in municipal affairs, shall be subject to and controlled by general laws." The following are municipal affairs: The fixing of salaries of members of the Police and Fire Departments: Popper v. Broderick, 123 Cal. 456; 56 Pac. Rep. 53. Fire Department matters: Opinions of Ex-City Attorney Franklin K. Lane (1899-1902), pp. 261, 262. The matter of opening the streets of the municipality: Byrne v. Drain, 127 Cal. 663; 60 Pac. Rep. 433. An act to require ordinances and resolutions passed by the City Council, or other legislative body of any municipality, to be presented to the Mayor or other executive officer of such municipality for his approval: Morton v. Broderick, 118

Cal. 474, 487; 50 Pac. Rep. 644. The purchase of lands for parks and boulevards, and the issuance of bonds, because it is authorized by the Charter itself: Fritz v. San Francisco, 132 Cal. 373; 64 Pac. Rep. 566. The management of hospitals and almshouses: Weaver v. Reddy, 139 Cal. 430; 67 Pac. Rep. 683. The imposing of license taxes for revenue: Ex parte Helm, 143 Cal. 553; 77 Pac. Rep. 453; Ex parte Lemon, 143 Cal. 558; 77 Pac. Rep. 455; Ex parte Jackson, 143 Cal. 564; 77 Pac. Rep. 457; Ex parte Braun, 141 Cal. 204; 74 Pac. Rep. 780. And the exercise of powers and duties by the municipal Board of Health established under the Charter: People v. Williamson, 135 Cal. 415; 67 Pac. Rep. 504. "Municipal affairs," as those words are used in the organic law, refer to the internal business affairs of a municipality: Fragley v. Phelan, 126 Cal. 383, 387; 58 Pac. Rep. 923; such as prohibiting further burials within city limits: Odd Fellows' Cem. As. v. San Francisco, 140 Cal. 226; 73 Pac. Rep. 987; fixing the compensation of municipal officers: Elder v. McDougald, 145 Cal. 740; 79 Pac. Rep. 429; and the control of almshouses: Weaver v. Reddy, 135 Cal. 430; 67 Pac. Rep. 683.

Municipal affairs. What are not. The following have been held not to be "municipal affairs": The procedure by which a municipality may annex contiguous territory: People v. Oakland, 123 Cal. 598; 56 Pac. Rep. 445. The trial and punishment of offenses defined by the laws of the State: Robert v. Police Court, 148 Cal. 131, 136; 82 Pac. Rep. 838.

Paramount law. The adoption of the Charter by the City and County of San Francisco, and its approval by the legislature, in the manner prescribed by the Constitution has the same effect as that of a law passed by bill: Sheehan v. Scott, 145 Cal. 684, 688; 79 Pac. Rep. 350.

The Charter of the City and County of San Francisco is not subject to existing laws, whether general or special: Martin v. Election Commissioners, 126 Cal. 404, 413; 58 Pac. Rep. 932; but in so far as San Francisco is a county, it is still subject to the general laws of the State: Popper v. Broderick, 123 Cal. 456; 56 Pac. Rep. 53.

The Charter, when approved, became the organic law of the City and County, by the express terms of the Constitution, art. XI, secs. 6 and 8, and superseded the existing charter and all laws inconsistent with the new Charter, and the City and County is no longer subject to or controlled by general laws as to municipal matters: Burke v. Board of Trustees, Ct. of App., 1st Dist., Aug. 15, 1906; 87 Pac. Rep. 421. And any code provisions inconsistent with provisions of the Charter on municipal matters are, to that extent, superseded by the Charter: People v. Williamson, 135 Cal. 415; 67 Pac. Rep. 504; Matter of Dodge, 135 Cal. 512; 67 Pac. Rep. 973.

Charter as statute. A charter is a "statute" within the meaning of § 1622 of **Kerr's Cyc. Civ. Code**, providing that all contracts may be oral, except when required by the statute to be in writing: Frick v. Los Angeles, 115 Cal. 512, 516; 47 Pac. Rep. 250.

Attacking Charter. Party defendant. In a proceeding brought for the testing and determining the validity of a municipal charter, the municipality is a necessary party defendant: People v. Gunn, 85 Cal. 238, 245; 24 Pac. Rep. 718.

TABLE OF CASES CITED.

A

Pages
Alameda Macadamizing Co. v. Huff 143
Alameda Macadamizing Co. v. Pringle 156
Alameda Macadamizing Co. v. Williams 165, 188
Amyx v. Taber 31
Anderson v. De Urioste 152, 156, 226
Andrews v. Pratt 337
Appeal of Houghton 204, 224
Archer v. Salinas City 324
Argenti v. San Francisco 185
Arnold v. San Jose 12

B

Babcock v. Goodrich 21, 90
Bailey v. Johnson 103
Banaz v. Smith 156, 160, 172, 211, 227
Bancroft v. City of San Diego 53
Bank of California v. San Francisco 98
Barto v. Board of Supervisors 60
Barton v. McDonald 204
Bassett v. Enwright 177, 190
Bates v. Board of Education 234
Bates v. Twist 160, 169, 183
Bays v. Lapidge 193
Beale Street, In Matter of 204, 224
Beaudry v. Valdez 151, 160, 185, 190, 205, 337
Belser v. Hoffschneider 190, 195
Benninger, Ex parte 255
Bernstein v. Downs 152
Berry v. Goad 233, 238
Bigelow v. Ballerino 206
Birch v. Phelan 108
Bishop v. Superior Court 228
Blanchard v. Hartwell 27, 365
Blanchard v. Ladd 162, 185
Blatner v. Davis 172
Bloom v. San Francisco 53, 225
Board of Education v. Donahue 236, 247

Pages
Board of Education v. Fowler 236, 246
Board of Education v. Martin 236, 246
Bolton v. Gilleran 156, 171
Boswell, Ex parte 31
Bradley v. Board of Education 234
Brady v. Bartlett 144, 152, 170
Brady v. Burke 152, 161, 195
Brady v. Fisel 144
Brady v. King 161, 171, 183, 195
Braun, Ex parte 38, 39, 367
Brock v. Luning 151, 152, 190
Brook v. Horton 206
Brooks v. Satterlee 143
Brown v. Jenks 150, 156
Bryer v. Chase 195
Buck v. City of Eureka 110
Buckman v. Ferguson 151
Buckman v. Hatch 162
Buckman v. Landers 152, 176, 189, 194
Bucknall v. Story 194, 195
Bulmer, Estate of 232, 235, 239
Burk v. Altschul 205
Burke v. Board of Trustees 269, 272, 367
Burke v. Turney 150, 194
Burnett v. Sacramento 171
Byrne v. Drain 366

C

Cahen v. Wells 321
California Imp. Co. v. Quinchard 147
Callender v. Patterson 147, 153
Campbell, Ex parte 31
Capron v. Hitchcock 167, 191
Carrillo, In re 366
Casinello, Ex parte 31
Chambers v. Satterlee 151, 152, 160, 171, 172, 205, 224
Chase v. Trout 155, 211
Cheney, Ex parte 32
Chin Yan, Ex parte 32
Chope v. City of Eureka 12
City of Eureka v. Armstrong 206
City of Healdsburg v. Mulligan 92
City of Napa v. Easterby 204, 224
City of Pasadena v. Stimson 228

Pages
City of San Diego v. Dauer 230
City of San Jose v. Freyschlag 219
City of San Pedro v. Southern Pac. R. R. Co 229
City of Santa Ana v. Harlin 212, 219
City of Santa Rosa v. Bower 27
City of Stockton v. Clark 143
City of Stockton v. Creanor 144, 146
City of Stockton v. Dunham 172
City of Stockton v. Whitmore 151
City Street Imp. Co. v. Babcock 155, 165, 166, 167, 192, 211
City Street Imp. Co. v. Emmons 185
City Street Imp. Co. v. Laird 160, 166, 176
City Street Imp. Co. v. Rontet 165, 186
City Street Imp. Co. v. Taylor 181
Clarke v. Meade 195
Clarke v. Police Life etc. Ins. Board 266
Clarke v. Reis 266
Cochrane v. Collins 147, 154
Cohn v. Parcels 324
Conlin v. Seamen 152, 193
Cook v. Sudden 204
Cosgriff v. Board of Election Commissioners 298
County of Modoc v. Spencer 28, 114
County of San Luis Obispo v. White 300
County of Yolo v. City of Sacramento 53
Creed v. McCombs 155, 211, 221
Creighton v. Manson 160, 171, 172
Croley v. Board of Trustees 337
Crowley v. Freud 320

D

Davenport v. City of Los Angeles 300
Davies v. Los Angeles 176, 212, 214, 366
Deady v. Townsend 161, 189, 205
Dehail v. Morford 169, 212, 213
De Haven v. Berendes 190
De Laney, Ex parte 31
Denman v. Broderick 297
Denman v. Webster 237, 241
Desmond v. Dunn 364
Diggins v. Brown 175, 176
Diggins v. Hartshorne 154, 175, 192, 193, 194, 204
Diggins v. Reay 194
Dodge, Matter of 97, 101, 366

	Pages
Dodge v. Nevada Nat. Bank	102
Dolan, Ex parte	122
Domingos v. Board of Supervisors	337
Donnelly v. Howard	188
Donnelly v. Marks	142, 146, 161
Donnelly v. Tillman	142, 146, 161
Dorland v. Bergson	151, 172, 188, 204, 205, 224
Dougherty v. Foley	148
Dougherty v. Harrison	166, 194
Dougherty v. Henarie	186, 194
Dougherty v. Hitchcock	146, 151, 183
Dougherty v. Miller	186
Dowling v. Conniff	190, 194
Dowling v. Hibernia etc. Soc	160, 161
Drexel, Ex parte	32
Driscoll v. Howard	194
Dunne v. Altschul	150
Dyer v. Barstow	150
Dyer v. Brogan	189
Dyer v. Chase	162, 188, 205
Dyer v. Harrison	176
Dyer v. Hudson	161
Dyer v. Miller	213
Dyer v. North	193
Dyer v. Pixley	193
Dyer v. Scalmanini	151, 171, 187

E

Earle v. Board of Education	230
Eby v. Board of School Trustees	247
Ede v. Knight	152, 172, 188, 189, 194
Elder v. McDougald	122, 127, 128, 367
Eldridge v. Cowel	228
Emery v. Bradford	154, 171
Emery v. San Francisco Gas Co	150, 151, 161, 169, 171
Ertle v. Leary	55
Estate of Bulmer	232, 235, 239
Estate of Fair	98
Estate of Pichoir	97
Eureka, City of, v. Armstrong	206
Ex parte Benninger	255
Ex parte Boswell	31
Ex parte Braun	38, 39, 367
Ex parte Campbell	31

Pages
Ex parte Casinello 31
Ex parte Cheney 32
Ex parte Chin Yan 32
Ex parte De Laney 31
Ex parte Dolan 122
Ex parte Drexel 32
Ex parte Felchin 31
Ex parte Fiske 34
Ex parte Haskell 17
Ex parte Hayes 31
Ex parte Helm 39, 367
Ex parte Hodges 27, 32
Ex parte Hong Shen 31
Ex parte Green 28
Ex parte Jackson 39, 367
Ex parte Johnson 32
Ex parte Kuback 33, 55
Ex parte Lacey 32
Ex parte Lane 32
Ex parte Lemon 39, 367
Ex parte Liddell 17
Ex parte McClain 30
Ex parte McKenna 38
Ex parte McNalley 255
Ex parte Maguire 32
Ex parte Moynier 31
Ex parte Pfirrman 39
Ex parte Roach 27, 28
Ex parte Shrader 31
Ex parte Sing Lee 32
Ex parte Smith 31
Ex parte Taylor 32, 35
Ex parte Tuttle 31, 32
Ex parte West 32
Ex parte White 31
Ex parte Whitwell 33

F

Fair, Estate of 98
Fairchild v. Board of Education 235
Fairchild v. Wall 148
Falk v. Reis 298
Fanning v. Leviston 190, 194
Farrell v. Board of Police Commissioners 263
Farrell v. Board of Trustees 261

Pages
Felchin, Ex parte 31
Fiske, Ex parte 34
Fitch v. Board of Supervisors 37, 314
Fitzhugh v. Ashworth 151, 162, 205
Flaherty, In re 31
Flickenger v. Fay 201
Flinn v. Gouley 192
Flinn v. Strauss 144, 194
Foley v. Bullard 189
Foster v. Police Commissioners 31
Fragley v. Phelan 367
Fresno etc. Co. v. McKenzie 225
Fresno Nat. Bank v. Hawkins.......................... 238
Frick v. Los Angeles 60, 367
Frick v. Morford 171, 190
Fritz v. San Francisco 346, 365, 366, 367

G

Gafney v. San Francisco 204, 224
Garnett v. Brooks 320
Gately v. Leviston 159, 213
German Sav. and Loan Soc. v. Ramish........155, 156, 179, 211, 212
Germania Trust Co. v. San Francisco.................... 97
Gillis v. Cleveland 183, 185, 186, 195
Girvin v. Simon 146, 154, 190, 193
Gray v. Burr 166
Gray v. Lucas 185, 187
Green, Ex parte 28
Greene v. Board of Education 233
Greenwood v. Chandon 186
Greenwood v. Morrison....................160, 182, 183, 186, 217
Grove Street, In re 213, 214
Guerin v. Reese 185, 188
Guerrero, Matter of 255
Guy v. Hermance 228

H

Hadley v. Dague 175
Hancock v. Bowman 193
Hancock v. Whittemore 171, 192
Hang Kie, In re 31
Harby v. Board of Education 234
Harney v. Benson 169, 172, 190
Harney v. Heller 162, 167
Harrison v. Horton 114

Pages
Harrison v. Roberts 13, 15, 20, 26
Hart v. Gaven 199
Haskell, Ex parte 17
Haskell v. Bartlett 194
Haughawout v. Raymond.............................155, 211
Hayes, Ex parte 31
Healdsburg, City of, v. Mulligan........................... 92
Heath v. Manson 196, 198
Heft v. Payne 150, 152, 194
Heinlen v. Sullivan 253
Hellman v. Shoulters 194
Helm, Ex parte 39, 367
Hendrick v. Crowley 153
Hewes v. Reis 143, 172
Higgins v. Cole 279
Higgins v. San Diego Water Co............................ 66
Himmelman v. Oliver 194
Himmelman v. Spanagel 171, 193
Himmelman v. Woolrich 188, 193
Himmelmann v. Bateman 172, 185
Himmelmann v. Booth 188
Himmelmann v. Byrne 142
Himmelmann v. Cahn 143, 172
Himmelmann v. Carpentier 186
Himmelmann v. Cofran 171, 187
Himmelmann v. Danos 183, 185
Himmelmann v. Hoadley 170, 172, 183, 185, 189, 190
Himmelmann v. McCrelly 162
Himmelmann v. Reay 188
Himmelmann v. Satterlee 146, 151, 160, 162
Himmelmann v. Steiner 172
Himmelmann v. Townsend 146, 192, 199
Hoadley v. San Franicsco 324
Hodges, Ex parte 27, 32
Hong Shen, Ex parte 31
Houghton, Appeal of 204, 224
Houston v. McKenna 152
Howard v. San Francisco 273
Hubbell v. Campbell 195, 200
Hughes v. Alsip 195
Hunt v. Broderick 65

I

In Matter of Beale Street 204, 224
In Matter of Market Street 172

Pages
In re Carrillo ... 366
In re Flaherty ... 31
In re Grove Street ... 213, 214
In re Hang Kie ... 31
In re Kelso ... 32
In re Linehan ... 31
In re Murphy ... 31
In re Stow ... 55
In re Stuart ... 31
In re Wetmore ... 247
In re Yick Wo ... 31

J

Jackson, Ex parte ... 39, 367
Jackson v. Baehr ... 109
Jacobs v. Board of Supervisors ... 20
Jennings v. Le Breton ... 154, 169, 172
Jennings v. Le Roy ... 195, 204, 224
John Kelso Co. v. Gillette ... 166
Johnson, Ex parte ... 32
Johnson v. Simonton ... 31

K

Kahn v. Supervisors ... 212, 213, 214
Kahn v. Sutro ... 10, 84, 88, 92, 97, 103, 106, 107, 110, 112, 115, 116, 117, 119, 300, 364
Kavanagh v. Police etc. Commissioners ... 270
Keller v. Hewitt ... 235, 244
Kelly v. Luning ... 177, 183
Kelso, In re ... 32
Kelso v. Cole ... 152
Kennedy v. Board of Education ... 230, 234, 235, 366
Kennedy v. Miller ... 230, 231, 235
Kenny v. Kelly ... 177, 190, 191
King v. Lamb ... 150, 161
Klumpke v. Baker ... 101
Kreling v. Muller ... 175
Kuback, Ex parte ... 33, 55

L

Labs v. Cooper ... 172, 185
Lacey, Ex parte ... 32

Pages

Lamberson v. Jefferds 90, 114
Lane, Ex parte 32
La Societa Italiani etc. v. San Francisco 30
Law v. San Francisco 17, 307, 345, 346, 366
Lees v. Colgan 41, 254
Lehn v. San Francisco 53
Lemon, Ex parte 39, 367
Lent v. Tillson 167, 172, 212, 214
Lewis v. Widber 68, 298
Libbey v. Elsworth 151
Liddell, Ex parte 17
Linden v. Case 90, 95
Linehan, In re 31
Los Angeles v. Cohn 206
Los Angeles v. Hance 304
Los Angeles v. Waldron 219
Los Angeles County v. Kirk 232
Los Angeles etc. School District v. Longden 346
Los Angeles Gas Co. v. Toberman 60
Los Angeles L. Co. v. Los Angeles 166
Lowenberg v. Greenebaum 98
Lubliner v. Alpers 26
Lucas v. San Francisco 185

M

McBean v. Martin 188
McBean v. Redick 190
McBean v. San Bernardino 175
McCabe v. Carpenter 245
McClain, Ex parte 30
McCloskey v. Kreling 34
McConoughey v. Jackson 337
McCullough v. Board of Education 246
McDonald v. Conniff 172, 175, 194, 205
McDonald v. Dodge 146, 160
McDonald v. Mezes 150
McGowan v. Ford 66
McHugh v. San Francisco 346, 366
McKannay v. Horton 338
McKenna, Ex parte 38
McNalley, Ex parte 255
McSherry v. Wood 194
McVerry v. Boyd 152, 190, 202
McVerry v. Kidwell 154

Pages
Mackay v. San Francisco.... 97
Maguire, Ex parte.... 32
Mahlstadt v. Blanc.... 192
Manning v. Den....150, 190, 194
Marion v. Board of Education.... 234
Mark v. Superior Court.... 233
Market Street, In Matter of.... 172
Marsh v. Supervisors.... 366
Martin v. Election Commissioners.... 367
Martin v. San Francisco.... 185
Martin v. Wagner 177, 178, 204, 205
Matter of Beale Street 204, 224
Matter of Dodge 97, 101, 366
Matter of Guerrero 255
Matter of Market Street 172
Matter of Wong Hane 30
Maxwell v. Board of Fire Commissioners.... 274
Mayo v. Ah Loy.... 194
Mayrhofer v. Board of Education.... 247
Merced County v. Cook.... 114
Merriam v. Barnum.... 114
Merriam v. Board of Supervisors.... 21
Meuser v. Risdon 142, 148
Meyers v. Pond.... 298
Miller v. Curry 364
Miller v. Mayo....153, 161, 193
Mitchell v. Board of Education.... 237
Mitchell v. Winnek.... 234
Modoc County v. Spencer....28, 114
Moffitt v. Jordan.... 185
Montague v. English....66, 74
Montgomery Avenue Case....204, 224
Montgomery v. Santa Ana etc. Ry. Co....33, 34
Morgan v. Menzies.... 364
Morton v. Broderick.... 366
Moynier, Ex parte.... 31
Mulligan v. Smith....212, 214
Murphy, In re.... 31
Murphy v. San Luis Obispo....304, 313

N

Napa, City of, v. Easterby....204, 224
Nichols v. Police Pension Fund Commissioners.... 266
Nicholson Pav. Co. v. Fay.... 150
Nicholson Pav. Co. v. Painter.... 150

Pages

Nolan v. Reese.... 170

Norwood v. Baker.... 175

O

Oakland Pav. Co. v. Bagge.... 195

Oakland Pav. Co. v. Barstow.... 152

Oakland Pav. Co. v. Rier....151, 201

Obermeyer v. Patterson.... 186

O'Connor v. Hooper....141, 147

Odd Fellows' Cem. As. v. San Francisco....28, 30, 366, 367

O'Dea v. Mitchell....155, 211

O'Hale v. Sacramento.... 225

P

Pacific Coast S. S. Co. v. Kimball.... 229

Pacific Pav. Co. v. Bolton.... 193

Pacific Pav. Co. v. Gallett....165, 167

Pacific Pav. Co. v. Geary....166, 167, 169

Pacific Pav. Co. v. Sullivan Estate Co.... 167

Page v. Board of Supervisors.... 300

Page v. W. W. Chase Co.... 192

Parker v. Bernal.... 193

Parker v. Reay.... 177

Partridge v. Lucas....151, 160, 190, 205

Pasadena, City of, v. Stimson.... 228

Peachy v. Resmond.... 240

Pennie v. Reis.... 266

People v. Austin.... 176

People v. Babcock.... 240

People v. Broadway Wharf Co.... 229

People v. Cobb.... 119

People v. Crespi.... 121

People v. Gunn....365, 367

People v. Gunst.... 253

People v. Hammond.... 253

People v. Hecht.... 364

People v. Hoge.... 364

People v. Howard.... 248

People v. Lynch....169, 172, 176

People v. McFadden.... 24

People v. National Bank.... 98

People v. Newman.... 273

People v. Oakland.... 367

People v. O'Neil.... 190

Pages

People v. Pacific R. M. Co. 229
People v. Park and Ocean R. R. Co. 324
People v. Perry. 290, 291
People v. Pond. 253
People v. Pratt. 245
People v. Reis. 62
People v. Roberts. 229
People v. Russell. 18
People v. Sands. 119
People v. San Francisco. 204, 224
People v. San Francisco etc. R. R. Co. 229
People v. San Francisco Gas Light Co. 229
People v. Sargent. 245
People v. School District. 246
People v. Seale. 245
People v. Shorb. 335
People v. Sperry. 204
People v. Steamer America;. 229
People v. Sutter Street Ry. Co. 86
People v. Thompson. 300
People v. Williams. 228, 229
People v. Williamson. 290, 366, 367
People v. Wilshire. 273
People v. Wilson. 93
Perine v. Erzgraber. 161, 176, 194
Perine v. Lewis. 162
Perine v. Forbush. 150, 151, 186, 191, 192
Perine etc. Pav. Co. v. Pasadena. 146, 171
Perine etc. Pav. Co. v. Quackenbush. 146, 150
Pfirrmann, Ex parte. 39
Phelan v. Dunne. 193
Phelan v. San Francisco. 201, 205
Pichoir, Estate of. 97
Pollac v. San Francisco Orphan Asylum. 206
Pollok v. San Diego. 66
Popper v. Broderick 366, 367
Porphyry Pav. Co. v. Ancker. 161
Powell v. Phelan. 108

R

Raisch v. Board of Education. 238
Raisch v. Hildebrandt. 192
Raisch v. San Francisco. 152
Randolph v. Bayue. 186

Pages
Randolph v. Grawley.......... 162
Randolph v. Payne.......... 194
Rauer v. Fay..........147, 152, 186, 193
Rauer v. Lowe..........141, 150, 151, 185
Rauer v. Williams.......... 366
Redondo Beach v. Cate..........175, 211
Reid v. Clay.......... 185
Reis v. Graff.......... 186
Rice v. Board of Trustees..........55, 144, 146, 337
Roach, Ex parte..........27, 28
Robert v. Police Court..........121, 367
Roberts v. Superior Court.......... 341
Robinson v. Merrill..........193, 194
Rodrigue v. Rogers..........88, 103, 317, 318
Ryan v. Altschul..........176, 186, 191

S

Sacramento Pav. Co. v. Anderson..........156, 159, 160, 161, 211
San Diego, City of, v. Dauer..........230, 240
San Francisco v. Buckman.......... 147
San Francisco v. Burr..........204, 206
San Francisco v. Certain Real Estate.......... 201
San Francisco v. Doe.......... 193
San Francisco v. Eaton.......... 193
San Francisco v. Hartnett.......... 125
San Francisco v. Itsell.......... 324
San Francisco v. Kiernan.......... 212
San Francisco v. Liverpool etc. Ins. Co..........62, 282
San Francisco v. Oakland Water Co.......... 98
San Francisco v. Wagenheim.......... 98
San Francisco etc. Ry. Co. v. Scott.......... 99
San Francisco Gas Co. v. Brickwedel..........36, 66, 68, 74
San Francisco Pav. Co. v. Bates.......... 175
San Francisco Pav. Co. v. Dubois..........160, 176, 177, 182, 186
San Jose, City of, v. Freyschlag.......... 219
San Jose Imp. Co. v. Auzerais..........161, 191
San Luis Obispo County v. White.......... 300
San Pedro, City of, v. Southern Pac. R. R. Co.......... 229
Santa Ana, City of, v. Harlin..........212, 219
Santa Barbara v. Huse.......... 193
Santa Cruz etc. Pav. Co. v. Broderick.......... 144
Santa Cruz Pav. Co. v. Bowie.......... 193
Santa Rosa, City of, v. Bower.......... 27
Savings and Loan Society v. San Francisco..........101, 102

Pages
Sawyer v. San Francisco.................................... 324
Schmidt v. Market etc. R. R. Co.........................161, 202
Schmitt v. Dunn.. 298
Schumacker v. Toberman..................................171, 183
Schwiesau v. Mahon...................149, 150, 151, 153, 186, 190
Scott v. Sheehan... 103
Security Savings etc. Co. v. Hinton........................ 62
Sehorn v. Williams.......................................21, 90
Shakespear v. Smith.. 337
Shaw v. Statler.. 68
Sheehan v. Scott...................................103, 365, 367
Shepard v. Colton.......................................143, 146
Shepard v. McNeil..................................154, 171, 193
Shipman v. Forbes.. 185
Shirmer v. Hoyt.. 188
Shrader, Ex parte.. 31
Sievers v. San Francisco................................... 12
Sing Lee, Ex parte... 32
Sinton v. Ashbury.. 212
Smith, Ex parte.. 31
Smith v. Broderick... 74
Smith v. Brown... 263
Smith v. Davis... 172
Smith v. Hazard...154, 161
South Pasadena v. Terminal Ry. Co........................27, 28
Spangler v. San Francisco................................53, 225
Spaulding v. North San Francisco etc. R. R. As....148, 159, 166, 167, 213
Spaulding v. Wesson................................159, 193, 195
Stanford v. San Francisco.................................. 99
Stanley-Taylor Co. v. Supervisors.......................... 55
Stansbury v. White... 171
Staude v. Board of Election Commissioners.................. 253
Stockton, City of, v. Clark................................ 143
Stockton, City of, v. Creanor...........................144, 146
Stockton, City of, v. Dunham............................... 172
Stockton, City of, v. Whitmore............................. 151
Stockton Gas and Electric Co. v. San Joaquin County........ 98
Stow, In re.. 55
Stuart, In re.. 31
Symons v. San Francisco.................................... 206

T

Tape v. Hurley... 232
Taylor, Ex parte...32, 35

Pages

Taylor v. Palmer......150, 152, 171, 185
Thom v. County of Los Angeles...... 233
Thomason v. Ashworth...... 366
Thomason v. Carroll......165, 167
Thomason v. Cuneo...... 169
Thomason v. Ruggles......156, 366
Treanor v. Houghton...... 146
Turner v. Siskiyou...... 366
Turrill v. Grattan......213, 214
Tuttle, Ex parte......31, 32

U

Union Pav. etc. Co. v. McGovern...... 167

V

Vanderhurst v. Tholcke...... 35
Vincent v. Pacific Grove...... 161
Von Schmidt v. Widber......28, 32, 36, 91, 95

W

Walsh v. Mathews...... 171
Ward v. Flood...... 232
Warren v. Chandos......151, 190
Warren v. Postel...... 175
Warren v. Riddell......154, 190
Warren v. Russell......160, 166
Washburn v. Lyons......161, 193
Weaver v. Reddy......290, 367
Weaver v. San Francisco......65, 66, 74, 83
Webster v. Board of Education...... 241
Wells v. Wood......152, 161, 190
West, Ex parte...... 32
Wetmore, In re...... 247
Wetmore v. San Francisco...... 152
Whelan v. Boyd...... 204
White, Ex parte...... 31
White v. Harris...... 161
Whiting v. Quackenbush......171, 172
Whiting v. Townsend......161, 172, 188, 189, 194
Whitwell, Ex parte...... 33
Wilbur v. Lynde...... 337
Wilcoxon v. San Luis Obispo...... 212
Williams v. Bergin......161, 171, 186, 190, 191

Pages
Williams v. McDonald.. 160
Williams v. Savings and Loan Soc........................... 153
Williams v. Viselich.. 191
Witter v. Bachman... 194
Wong Hane, Matter of.. 30
Wood v. Brady... 186
Wood v. Election Commissioners.............................. 364
Wood v. Lowden.. 117
Wood v. Strother.......................................186, 187
Wulzen v. Board of Supervisors.........................212, 219
Wysinger v. Crookshank.................................232, 233

Y

Yick Wo, In re.. 31
Yolo County v. City of Sacramento........................... 53

CITATIONS OF THE CONSTITUTIONS.

Pages
Cal. 1879, Art. I, sec. 6 .... 35, 126
II, sec. 18 65
IV, sec. 25 119
VI, sec. 11 119
IX, secs. 1-12 230
IX, sec. 3 .... 240, 299
IX, sec. 5 231
IX, sec. 8 242
XI, sec. 6 366
XI, sec. 8 .... 26, 340, 364
XI, sec. 8½ 97, 107, 112, 115, 116, 117, 121, 122, 125, 127, 128, 300, 332
XI, sec. 18 .... 68, 83, 365
XI, sec. 19 98
XIII, sec. 1 100
XIII, sec. 10 99
XIV, sec. 1 37
XIV, sec. 11 71
XX, sec. 12 335
U. S., Amdt. VIII 126

CITATIONS OF THE CODES.

KERR'S CYC. POL. CODE.

Pages
§ 52 335
§ 380 41
§ 808 122
§ 853 .... 335, 338
§ 920 .... 55, 337
§§ 947-987 .... 331, 332
§ 954 332
§ 955 .... 332, 333
§ 956 332
§ 958 332
§ 965 333
§ 985 334
§ 996 .... 87, 338
§ 997 87
§ 1030 .... 84, 88, 92, 97, 102, 106, 107, 108, 110, 112, 115, 116, 117
§§ 1075-1080 297
§ 1192 298
§ 1239 335
§§ 1385-1889 230
§§ 1517-1891 .... 230, 335
§ 1521 .... 234, 235
§ 1523 237
§ 1543 242
§ 1549 241
§ 1550 241
§ 1552 240
§ 1617 233
§§ 1634-1640 236
§ 1639 236
§ 1662 .... 232, 233
§ 1754 234
§ 1775 .... 234, 235
§§ 1787-1794 244
§ 1792 235
§ 1793 .... 233, 234
§§ 1817-1820 245

Pages
§ 1874 233
§§ 1897, 1898 104
§§ 2520-2554 228
§ 2524 229
§ 2805 29
§§ 2906-2921 228
§ 3009 .... 293, 294
§ 3010 .... 293, 294, 295
§§ 3023-3025 293
§ 3028 293
§ 3035 30
§§ 3244-3250 41
§ 3366 .... 38, 39
§ 3617 100
§§ 3627-3671 97
§ 3628 .... 98, 101, 102
§ 3629 102
§§ 3644-3645 100
§ 3648 .... 100, 101
§ 3649 .... 100, 101
§ 3652 67
§ 3672 67
§ 3681 101
§§ 3672-3705 45
§§ 3713-3719 62
§§ 3746-3819 102
§§ 3746-3831 104
§ 3804 28
§ 3805 29
§ 3819 29
§ 3862 101
§ 3897 .... 104, 343
§§ 3950-3953 10
§§ 4022-4087 27
§ 4047 343
§ 4071 337
§ 4072 21
§§ 4073-4076 52

KERR'S CYC. POL. CODE (Continued).

	Pages
§ 4076	90
§ 4109	97
§ 4112	342
§ 4146	77
§§ 4175-4193	96, 117
§ 4154	78
§§ 4204-4205	115
§§ 4234-4247	107
§§ 4256-4259	112
§§ 4285-4292	106
§ 4372	212
§ 4411	342
§§ 4424-4432	120
§§ 4430-4432	123
§§ 4445-4449	313

KERR'S CYC. PENAL CODE.

	Pages
§ 71	55, 337
§ 94	127
§ 165	340
§ 166	123
§ 248	121
§ 249	121
§ 370	35
§ 372	35
§ 412	31
§ 424	93
§ 428	102
§ 429	102
§ 657	123
§§ 758-772	314
§ 854	171
§§ 858-883	123
§ 869	127
§§ 1002-1012	124
§ 1005	126
§ 1048	124
§ 1143	108, 109
§ 1171	127
§§ 1239-1241	126
§§ 1268-1317	126
§ 1279	124
§§ 1291-1292	126
§ 1331	343
§ 1332	343
§ 1367	12
§ 1373	12
§§ 1382-1389	123
§ 1468	123
§§ 1510-1519	106
§ 1547	41

KERR'S CYC. CODE CIV. PROC.

	Pages
§ 17	107
§§ 85-115	118
§ 97	119
§ 110	119
§§ 177-178	123
§§ 268-274	127
§ 274	108
§ 409	192
§§ 700-706	195, 200
§ 832	118
§ 926	118
§§ 929-933	120, 123
§ 1056	124, 333
§§ 1209-1222	123
§ 1238	228
§ 1691	94
§§ 1726-1744	115
§ 1737	72
§ 1884	41

KERR'S CYC. CIV. CODE.

Pages
§ 14 ... 107
§ 128 ... 343
§ 465 ... 50
§ 468 ... 86
§ 470 ... 44, 50
§ 489 ... 202
§ 497 ... 34, 50
§ 498 ... 139
§ 499 ... 43

Pages
§ 501 ... 42
§ 502 ... 343
§ 511 ... 50
§ 1201 ... 343
§§ 1209-1222 ... 343
§ 1275 ... 9
§ 1622 ... 367
§§ 1991-1994 ... 343

CODE AMENDMENTS.

Page
1873-74, pp 168-170 ... 10

CITATIONS OF STATUTES.

HENNING'S GENERAL LAWS.

Pages		Pages
138, 144,	§§ 17, 18	112
145	§ 19	116
211		119
421		337
725	§§ 124, 127	115
784	§ 121	88
786	§ 128	104
786	§ 129	97
786	§ 130	117
786	§ 131	107
787	§ 132	112
787	§ 134	115
787	§ 135	106
789	§ 133	110
810-815		119
810-817		119
1311-1370		33, 155, 156, 180, 211, 212
1332-1337		156, 212
1339, 1341		155, 212
1339, 1346		155, 211
1361, 1370		211

STATUTES.

	Pages
1850, p. 223	364
1865-66, p. 66	341
1869-70, p. 802	324, 325
1873-74, p. 333	325
1876, p. 461	134
1885, p. 147 (Vrooman Act)	133, 155, 156, 159, 161, 166, 175, 180, 211, 212, 216
1889, p. 70	133, 212
1891, p. 204 (Street Improvement Act)	177
1893, p. 89 (Change of Grade Act)	156
1893, p. 153	133
1893, p. 220	133
1895, p. 128	340

STATUTES (Continued).

	Pages
1899, p. 316	71
1905, p. 9	119
1905, p. 387	341

MISCELLANEOUS.

	Pages
Consolidation Act, 1856, p. 145	120, 364
County Government Act, sec. 58	119
One-Twelfth Act	65
Park and Boulevard Act, 1889, p. 361	346, 366
Primary Election Law	366
Public Improvement Act, 1901, p. 27	346, 366

INDEX.

The abbreviation "n.," when appended to a section or page number (as, 3 n.; n., 365), indicates note to such section or on such page.

	Sec. or Subd.	Page
ACCOUNT AND SETTLEMENT.		
Statement of account, prosecution of claim	14	81
ACQUISITION OF PUBLIC UTILITIES.		
Acquisition through annual revenues	4	305
Acquisition through bond issues	4	305
Annual tax for interest and sinking fund	12	313
Article on	1-13	301-314
Bills for, discussion and analysis	5 n.	308
Bonded indebtedness; ordinance for special election shall set forth what	7	309
Civil Service provisions as to all Boards or Departments controlling	11	319
Control, by Board of Public Works	8	138
Cost of water-works	1	301
Declaration of necessity of acquiring improvements is unnecesary when	5 n.	308
Duty of Clerk of Supervisors	3	302
Duty of Supervisors	3	302
Duty of Supervisors when cost can be paid out of annual revenues	5	307
Estimates for, to be procured through City Engineer	1	301
Incurring of municipal bonded indebtedness	5	307
Intention of the people	1	301
Limit to indebtedness	9	311
Majority of electors to decide	4	305
Mayor may submit proposition	3	302
Nature of utilities contemplated	1	301
Notice of election for fourteen days	8	310
Offers for the sale of utilities	2	302
Ordinance calling special election; questions to be submitted	6	309
Ordinance for special election shall set forth what	7	309
Ordinance of intention to be published two weeks	5	307
Ordinance, publication of, for ten days	8	310
Penalty for failure to enforce article	13	314
Petition of electors	3	302
Plans and estimates must have been procured	3 n.	305

Sec. or Subd. Page
ACQUISITION OF PUBLIC UTILITIES (Continued).
  Plans and estimates of cost of construction........ 1 301
  Power of Supervisors as to....................... 3 302
  Procedure prior to calling election................3 n. 305
  Propositions, plans, and estimates, how made.......10 n. 140
  Purchase of city property, description necessary..10 n. 140
  Question of, when to be submitted to people........3 n. 304
  Request for plans and estimates for..............10 n. 140
  Serial bonds, how to be sold, proceeds, surplus...... 10 311
  Serial bonds, manner and time of payment.......... 10 311
  Serial bonds, signatures, coupons.................. 11 313
  Serial bonds, to be exempt from taxation; denominations 10 311
  Serial bonds, to be issued as required............... 10 311
  Serial bonds, when and where payable 10 311
  Sources of supply 1 301
  Supervisors may proceed at once 3 302
  Supervisors shall furnish what data for Board of Public Works 10 140
  Supervisors to call special election when, and for what purpose 4 305
  Supervisors to negotiate for..................... 1 301
  Supervisors to undertake proceedings when......... 4 305
  Two alternative propositions 3 302
  Two-thirds vote of electors to decide............. 4 305
ADDITIONAL CLERKS OR EMPLOYEES.
  May be appointed when 35 348
ADMINISTRATION OF OATHS.
  Power of officers and boards...................... 24 342
  Secretary of Board of Public Works has no power as to ....24 n. 343
ADOPTION OF AMENDMENTS TO CHARTER...... 365
ADOPTION OF CHARTER 364
ADVERTISEMENT FOR PROPOSALS.
  For public work 14-16 142-144
ADVERTISING.
  Liability of City and County for cost of............4 n. 11
ALMSHOUSES.
  Supervisors to establish and maintain.............. 11 36
AMENDMENT OF CHARTER...................... n., 365
AMENDMENTS TO CHARTER.
  By petition; signatures; special election; tickets, etc. 22 25
  Same .... n., 365
  Construction of constitution......................22 n. 25
  Proposals for; form of ....22 n. 25

Sec. or Subd. Page

ANIMALS.
  Cruelty to, collection of fines........ 19 40
ANNUAL BUDGET.
  Apportionment of funds in........ 4 63
  Cannot be increased or diminished........3 n. 63
  Estimate shall be filed in Auditor's office........ 4 63
  Supervisors to make; public hearing........ 3 63
ANNUAL REPORTS.
  To be made by whom........ 9 338
APPEAL.
  Right of, to Supervisors........ 14 189
  To Supervisors, effect of failure to........14 n. 190
  To Supervisors in general........14 n. 190
  To Supervisors, notice of ....14 n. 191
  To Supervisors, procedure on 14 189
APPLICATION OR PETITION. See Opening etc. of Streets, and Streets.
  For opening etc. of streets, essentials of........2 n. 213
  For opening etc. of streets, necessity of........ 2 213
  For opening etc. of streets, signing of........2 n. 214
  For street work is required when........2 n. 158
APPROVAL OF AMENDMENTS TO CHARTER..... 358-363
APPROVAL OF CHARTER 355-357
ARCHITECT OF BUILDINGS OF BOARD OF PUBLIC WORKS.
  Exemption of, from Civil Service provisions........ 11 320
ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 2. 1 n. 155
  Same 1 324
  Same .... n., 365
  Was lost at following election........ 155, 324, 365
ASSESSMENT.
  Of property ....2 n. 97-102
ASSESSMENTS FOR STREET IMPROVEMENTS.
  According to nature of work 2 176
  Answer to complaint ....15 n. 193
  Appeal to Supervisors from decision of Board 14 189
  Appeal to Supervisors, in general........ 14 190
  Appeal to Supervisors, notice of........ 14 191
  Assessment, diagram, and warrant as evidence of performance of work ....15 n. 193
  Assessment for sewering on one side of street...... 8 178
  Assessment for street improvements, restriction on 8 172
  Assessment, how made in special cases........ 10 182
  Assessment not to exceed certain amount........ 8 172
  Assessment of benefits ....1 n. 182

	Sec. or Subd.	Page
ASSESSMENTS FOR STREET IMPROVEMENTS (Continued).		
Assessment of each lot	9 n.	176
Assessment of triangular-shaped lot	7 n.	178
Assessment per "front foot," mode of	9	175
Assessment to complete an unimproved portion of street	8	178
Assessment, warrants for	12	208
Attorneys' fees for recovery of assessment	15	191
Authentication of assessments	11	183
Authentication of warrant, assessment, and diagram	12 n.	185
Burden and sufficiency of proof in action on	15 n.	194
Benefit, equality, and uniformity	7 n.	172
Board may establish method of	10	182
Collection of	13	187
Complaint in action on, in general	15 n.	192
Complaint in action on, necessary allegations	15 n.	192
Complaint in action on, unnecessary allegations	15 n.	193
Contractor may collect	12	183
Contractor may sue for unpaid, when	15	191
Contractor must demand payment of lawful	13	187
Counterclaim and set-off in action on	15 n.	193
Decision of Supervisors on appeal is final	14	189
Defect of assessments or warrants; new assessment	12	183
Demand for payment of	13 n.	188
Description of property	7 n.	172
Distinguished from "taxation"	7 n.	171
District assessment, in general	5 n.	169
District assessment, method of, in opening new streets	28 n.	207
Division of expense on	8	172
Duty to make, time	7 n.	171
Estimating upon completion of contract	11	181
Expense of work on alley crossing main street	5	177
Expense of work on alley crossings	6	178
Expense of work on alley terminating in another street	7	178
Failure to appeal, effect of	14	190
Failure to return warrant, effect of	13	187
For cleaning and sprinkling streets	29	207
Form of warrant for street-work; recording	12	183
"Front foot" mode of assessment	9 n.	175
Hearing on appeal, Supervisors may remedy errors	14	189
In opening etc. of streets	10	218
Judgment in action on. Allowance of attorneys' fees	15 n.	195

	Sec. or Subd.	Page
ASSESSMENTS FOR STREET IMPROVEMENTS (Continued).		
Judgment in action on. Essentials, validity of	15 n.	194
Judgment in action on, finding	15 n.	195
Judgment in action on. Penalty, interest	15 n.	194
Lessee may deduct payment of, from rent	20	199
Lien of	12 n.	186
Lien of assessment, and execution	15	191
Lien of, for two years	12	183
Lien of warrant, assessment, and diagram, when recorded	12 n.	185
Limit of	3	174
Main street terminating in another street	4	177
Parties defendant in action on	15 n.	193
Payment of, may be made before suit	13	187
Plaintiffs in action on	15 n.	193
Power of Supervisors to order, canceled	1 n.	29
Power to levy	7 n.	171
Prima facie evidence in action on	15, 15 n.	194
Prohibition as to further	12 n.	186
Public demand for payment of	13	188
Railroads must bear proportion of	7	170
Same	3	174
Release of, upon payment	13	187
Return of warrant	13	188
Right of appeal from	12	183
Sale of land, deed, right to redeem	15 n.	195
Sale of land under void	15 n.	195
Shall be levied how	9, 9 n.	175
To known or "unknown" owners	7	172
Unpaid assessments draw interest	13	187
Validity of, not affected by defects in preliminary bonds	11 n.	183
Void assessment cannot be validated	10 n.	183
Warrant attached to	12	183
Warrant is prima facie evidence of regularity	15	191
Warrant for, prima facie evidence of regularity	15	191
Warrant to be returned	13	187
Work at intersections	4 n.	177
Work on main street crossings	3	176
ASSESSOR.		
Amount of bond of	2	331
Appointees of, salaries	1	96
Chapter on	96	102
Civil Service provision as to	11	319
Duties of	2 n.	97
Election of	1 n.	97

	Sec. or Subd.	Page
ASSESSOR (Continued).		
Same	1	299
Extra clerks of	1	96
Has no right to percentage on poll-taxes	2 n.	101
Is a municipal officer	1 n.	97
Office hours of	1 n.	97
Qualifications, term, salary	1	96
Salary of, amendment of law	1 n.	97
ATTACHES.		
Of Police Court, power to fix compensation of	11 n.	127
AUDITOR.		
Amount of bond of	2	331
Annual estimate of city's requirements and revenues	2	62
Appointees of, qualifications and salary	2	88
As book-keeper of city	3 n.	88
As custodian of book of official receipts	5	77
Auditor's extra clerks	2	88
Bond of, must be approved by Mayor	1	331
Bonds of employees of Board of Public Works shall be filed with	4	132
Chapter on		87-89
Civil Service provisions as to	11	319
Demands of absentees	6	90
Demands of negligent officers	6	89
Demands to be numbered and recorded, penalty	4	89
Duties and powers of	1	87
Duties of, as to Fire Department pension	8	286
Duties of, as to monthly statements concerning mileage	11	79
Duties of, as to stating account	14	81
Duties of, as to warrants by Police Pension Fund Commissioners	9	269
Duties of, when notified of moneys due city	6 n.	90
Duties of, where extra assistants are employed	12	79
Duty of, as to order of demands	8	91
Duty of, as to surrender and redemption of bonds	7	73
Duty of, to draw warrant for payment of jurors' fees	1 n.	109
Duty of, to examine and settle accounts	10	78
Duty of, to segregate Common School Fund	9	237
Election of	1	299
"Extra clerk," position is of limited duration	2 n.	88
Indorsement of, upon contracts, exception	10	66
Is joint custodian with treasurer	3	93
Liability of, for auditing improper demands	7	91
May appoint a secretary, salary	10	270

	Sec. or Subd.	Page
AUDITOR (Continued).		
May expend how much for counsel and attorney's fees	2	88
May require oaths	6	90
May require monthly reports and exhibits of officers	9	78
Must approve all demands	3	88
Must approve withdrawal of bail-moneys	2 n.	93
Must deduct debit from credits	6	89
Must draw warrants for demands upon the treasury	6	64
Must indorse what demands	7	90
Must indorse what statements on demands, when allowed	7	91
Must keep account of all moneys	3	88
Must keep register of warrants	8	91
Must report on Pension Fund, surplus, deficiency	13	272
Prerequisite to approval of all demands	5	89
Qualifications, term, salary	1	87
Shall keep a fund book	9	270
To sign licenses	5	105
Treasurer's monthly report or exhibit to	8	77
Weekly statements of	10	66
BACK CLAIMS.		
No payment of, out of delinquent taxes	7 n.	74
BAIL.		
Qualifications of	7 n.	124
Who may accept	8	126
BAILIFFS.		
In Police Courts	5	258
BAIL-MONEYS.		
Are not property of city	2 n.	93
No withdrawal of, without Auditor's approval	2 n.	93
Return of forfeited	1 n.	75
BALANCES.		
In the several funds to be transferred to their successive funds under the Charter	37	349
Of unnecessary funds	38	351
Transfer of, to general fund	38 n.	351
BIDS.		
Coupled propositions, rejection of	1 n.	156
Number and rejection of	1 n.	56
BOARD OF EDUCATION.		
Approval of, is necessary when	9 n.	237
Authority of holders of life diplomas to teach	3 n.	234
Census Marshals, vacancies, compensation	7	235
Demands against school funds, procedure	10	238
Dismissal of teachers without cause	2 n.	234

	Sec. or Subd.	Page
BOARD OF EDUCATION (Continued).		
Executive department, article on	84	107
General powers of	1 n.	233
How constituted, terms	1	230
Limitation upon demand against	1	82
May be compelled to pay for supplies furnished	10 n.	238
May incur extraordinary expenditures when	3	245
May require services of City Attorney when	8	236
Members, salary, qualifications	1	230
Must approve all demands payable out of the Common School Fund	13	80
Must give undertaking on appeal when	8 n.	237
Must make annual report to Supervisors	3	240
Must pass upon charges made against teachers	2	233
No authority to divert school moneys	9 n.	237
Power of, as to employment of teachers and fixing salaries	2	233
Power of, as to promotion and dismissal of teachers	2	233
Power of, to compel change of text-books	1 n.	233
Power of, to grant, renew, or revoke certificates	3	234
Powers of, in general	1	232
Powers of, in regulating vacancies	4	235
President of; term	2	231
Provisions governing proposals for supplies	2	239
Removal of teachers for cause	2	233
Right of, to command services of City Attorney	8 n.	236
Right of, to sue	8	236
Rights of teachers, how determined	4	235
Salary roll to be transmitted monthly to Auditor	10	237
School district, may take by will	12	239
School money, how disbursed	9	237
Secretary of; salary	2	231
Teacher's right to salary	9 n.	238
To adopt schedule of salaries for teachers	4	240
To be appointed by the Mayor	1	230
To be composed of four School Directors	1	230
To bring suits	8	236
To establish and change schools	2	232
To establish rules and regulations	4	235
To hold and lease property	6	235
To investigate charges	5	235
To invite proposals for furnishing supplies	2	239
To lease property of School Department	11	238
To order work done on school buildings	2 n.	247
To provide for disbursement of school moneys	9	237
To provide for payment of salaries of teachers and employees	9	237

	Sec. or Subd.	Page
BOARD OF EDUCATION (Continued).		
To receive and manage trust funds, etc	12	239
Vote to be taken by ayes and noes	3	231
Weekly meetings of	3	231
What contracts are void	2	239
BOARD OF ELECTION COMMISSIONERS. See Registrar of Voters.		
Amount of bond of	2	332
Appointment of clerks; salaries	4	298
Chapter on	1-5	296-299
Civil Service provisions as to	4	298
Same	11	319
Duty of, in submitting proposed amendments to Charter	22	26
Effect of bogus signatures upon petition presented to	3 n.	298
Five; to be appointed by Mayor	1	296
May provide itself with stationery	5 n.	299
May submit ordinance to vote when; signatures to petition; tickets in election	20	22
Must provide for precinct registration	5	298
Not to take part in politics	2	297
Organization of Board	3	297
Political affiliations of members	1	296
President of Board; term	3	297
Removal of, by Superior Court	18 n.	340
To afford equal representation	1	296
To appoint registrar of voters; salary	3	297
To have control and management of elections	1	296
Term; salary; qualifications	1	296
Time of appointment	1	296
BOARD OF FIRE COMMISSIONERS. See Fire Department; Secretary of Board of Fire Commissioners.		
Amount of bond of each Commissioner	2	332
Appointment by, of skilled electrician for Department of Electricity	2	287
Composition of, as to politics	2	273
Constitutes a department of the city government	1 n.	273
Control of property and equipments	5	274
Exemption from Civil Service examination	1	276
Fire Department under management of	1	273
Four members to constitute	1	273
Is independent of the Supervisors	1 n.	273
May allow salary during temporary disability	3	277
Meetings of, to be had weekly	4	274
Must see that contracts are performed	4	278

Sec. or Subd. Page

BOARD OF FIRE COMMISSIONERS (Continued).
- Power of, to discharge........ 1 277
- Powers and duties of........ 5-8 274-275
- President and Secretary of; duties, salary........ 4 274
- Reappointment without Civil Service examination of those temporarily discharged........ 1 277
- Qualifications; term; salary........ 1-2 273
- Rules as to awarding contracts for supplies........ 4 278
- Rules governing contracts and proposals........ 4 278
- Rules, regulations, fines........ 8 275
- Salary during temporary disability........ 3 n. 278
- Salary of each Commissioner........ 1 273
- Secretary of; who may be........ 4 274
- Shall establish fire companies........ 5 274
- Shall make appointments how........ 1 276
- Shall organize Fire Department........ 5 274
- Shall reorganize Fire Department........ 1 276
- Spirit of Charter as to tenure of position........ 1 n. 277
- Those first appointed; qualifications........ 2 273
- To appoint Chief Engineer of Fire Department........ 1 279
- To be appointed by Mayor........ 1 273
- To consist of four Commissioners........ 1 273
- To succeed whom in office........ 3 273
- Vacations upon salary........ 8 275
- What obligations must be met........ 4 n. 278
- Who exempt from Civil Service examination........ 1 n. 277

BOARD OF HEALTH.
- All physicians appointed by or on; exemption of, from Civil Service provisions........ 11 320
- Appointees of; salaries; duties........ 5 293
- Approval of demands by........ 3 n. 292
- Chief of Police is member of........ 1 290
- Civil Service provisions as to........ 11 319
- Control and disposition of expenditures........ 3 291
- Control of expenditures by........ 1 n. 55
- Control of expenditures........ 3 n. 292
- Five members of, to be appointed by Mayor........ 1 290
- Limitation on expenditures........ 3 n. 292
- Limit of compensation to officers and employees........ 10 294
- Limit to number of employees........ 11 295
- May appoint city hospital physician........ 6 293
- May appoint internes to City and County Hospital........ 9 294
- May set aside ward for treatment of inebriates........ 8 294
- Members of, shall elect a president........ 1 290
- Must serve without compensation........ 1 290
- No control by Board of Supervisors........ 3 n. 292

	Sec. or Subd.	Page
BOARD OF HEALTH (Continued).		
Power of, to abate nuisances	3	291
Power of, to appoint employees	3 n.	292
Powers and duties of	3-4	291-293
President of Board of Public Works is member of	1	290
Qualifications of members of	1	290
Quarantine of, cannot be removed by State Board of Health	3 n.	292
Recommendations to Board of Supervisors	4	293
Rules and regulations to be adopted by	1	290
Seven members to constitute	1	290
Shall appoint two visiting physicians for City and County Hospital	7	294
Shall appoint two visiting surgeons for City and County Hospital	7	294
Shall fix annually salaries of officers and employees	10	294
Shall have control of what hospitals	3	291
Shall have sanitary supervision of what institutions.	3	291
Superseding of State Board by Charter	1	290
Terms of members	2	290
To enforce ordinances of Board of Supervisors	4	293
To fix salary of Health Officer	5 n.	293
To grant permits for temporary deposits of dead bodies	3	292
Two members, are such ex officio	1	290
BOARD OF POLICE COMMISSIONERS. See PARK POLICE, and heads under POLICE, etc.		
Amount of bond of each Commissioner	2	332
Appointment by, of skilled electrician for Department of Electricity	2	287
Are trustees of Police Relief and Pension Fund	1	266
Cannot remove police officers without written charges.	3n.	263
Dismissal without approval of Civil Service Commissioners	3 n.	262
Dismissals from force are in hands of	3 n.	262
Fair trial before dismissal or punishment	3 n.	263
Four commisioners to constitute Board	1	253
Hearing of persons refused permits for sale of liquor.	3	255
Ineligibility of member of, to office	31	347
Is one of joint commission to control Department of Electricity	1	287
Issuance of warrants	9	269
May make rules and regulations as to appointment of members of department	3	252
May retire member on pension when	2	266
No authority to impose penalty of suspension	2 n.	262

Sec. or Subd. Page

BOARD OF POLICE COMMISSIONERS (Continued).
Power of disratement .... 2 n. 262
Power of, to appoint Police Matrons 6 256
Power of, to appoint Police Surgeons 7 256
Presentment of warrants 9 269
President may convene, for special meetings 2 256
Secretary as official custodian of official records 2 256
Shall keep public records of its proceedings 9 269
Shall not regard political or religious preferences of any candidate 3 256
To hold quarterly meetings 9 269

BOARD OF PUBLIC WORKS. See Secretary of Board of Public Works; Superintendent of Highways and Squares; Superintendent of Public Works; and Superintendent of Streets.
Advertisements for proposals 15 143
Advertising for proposals .... 14 n. 142
Affidavit of contractor to be filed with 6 169
Appeal from, to Supervisors 14 189
Appointees of Board 13 142
Appointment of City Engineer 11 140
Appointment of head for each department 13 142
Appointment of Secretary, etc 3 131
Authority to construct sewers, reservoirs, etc 8 227
Award of contract .... 17 n. 146
Bids for public work, receipt and award of 17 144
Bonds of officers and employees, approval of 4 132
Building construction 5 137
Certificate of satisfactory work 22 154
Certified check, forfeiture of 17 145
Civil Service provisions as to 11 319
Cleaning and sprinkling streets 3 137
Cleaning of public buildings 4 137
Collection of expenses of street repairs 9 138
Commissioners, restriction upon occupation 1 131
Construction of public buildings 6 137
Construction of sewers, procedure 4 163
Contracts for unfinished work, reletting of 20 148
Control of conduits 7 137
Control of drainage 2 137
Control of garbage and sewage 7 137
Control of lighting 3 137
Control of public utilities 8 138
Control of sewerage and drainage system 7 137
Custody of maps, surveys, contracts, etc 8 134
Data, plans, and estimates to be furnished by 10 140

	Sec. or Subd.	Page
BOARD OF PUBLIC WORKS (Continued).		
Disapproval of, to be reported to Supervisors, with reasons	2	157
Duty of, as to public sewers, etc	2	226
Duty of, to devise a general system of drainage	1	125
Emergency repairs not covered by what provision	9	140
Employees, compensation, duties, bonds	3-4	132
Estimate and assessment upon completion of contract for street work	10	182
Excavating streets, permits for	9	138
Excavation of streets; deposit to cover costs	9	138
Excess estimate for street work; surplus	9	138
Form of proposals	16	143
Fraud of contractor, effect of	18 n.	146
Fraudulent bids	16	144
Furnishing of plans and estimates for public utilities	10 n	140
Harmonizing of sections	2 n.	132
Has control of driveways around City Hall	1 n.	324
Has general supervision of what	9	134
Has power to create an official position, without consent of Civil Service Commissioners	10 n.	319
Has power to regulate what	9	134
Insufficient estimate of street work	9	138
Is custodian of all official papers and matters relating to streets	8	134
Letting of contracts; notice, etc	14	142
Liability of, for negligence	16 n.	196
Limitation on use of streets	1	136
"Major part of frontage," meaning of	19 n.	147
Map of work at street intersections or crossings is required	2	158
Matters under control of	9	134
May agree as to damages to owners in constructing sewers	7	227
May authorize purchase of property for sewers, etc.	6	227
May contract for doing work if owner does not	19	147
May do street work by contract or day's labor	9	138
May establish method of assessment	10	182
May make improvement chargeable upon district when	5 n.	167
May recommend paving	24	201
Meetings of, to be public	5	132
Same	9	217
Opening and awarding bids for work	17	144
Owner may contract for and do work	19	146

	Sec. or Subd.	Page
BOARD OF PUBLIC WORKS (Continued).		
Owners may contract for and do work	19 n.	147
Owners must file plats with, on the opening etc. of streets	9	217
Owner's written objection must be delivered to Secretary of	4	162
Penalty for collusion of bidders	9	138
Same	18	146
Permit authorizing structure narowing sidewalk	1 n.	136
Permit by, to obstruct streets	1 n.	136
Permit, sign not a structure	1 n.	136
Permit, to be granted by	1 n.	136
Permit to electric light companies	1 n.	136
Power of, as to continuance of proceedings	4	163
Power of, over streets, tracks, poles, wires, sewers, pipes, building materials; exception	9	134
Powers and duties of the Board	7	133
President of, is member of Board of Health ex officio	1	290
President of the Board; term	2	131
Procedure for building new school houses	1	246
Procedure in determining values on the opening etc. of streets	11	218
Procedure in making improvement chargeable upon district	5	168
Proposals for public work, details of	16	143-144
Public work by contract; exceptions	14	142
Purpose of affidavit	16 n.	144
Qualification; salary; terms	1	131
Recommendation by, to Supervisors as to sewers, drainage, etc.	5	226
Recommendation of, to Supervisors	2	156
Record of contracts and proceedings	6	133
Records of, to be open to inspection	21	200
Regulations of proposals for work	16	143-144
Reletting of contracts for work not completed	20	148
Report of, on opening etc. of streets	12	219
Request for plans and estimates for public utilities	10 n.	140
Right of, to cause condemnation of property for sewers, etc.	9	228
Right of, to continue proceedings after six months	4	163
Rules and regulations by, concerning drains and sewers	3	226
Rules and regulations of	4	132
Satisfaction of Superintendent of Streets	22 n.	154
Sealed proposals, invitation for	15 n.	143
Secretary of; duties	6	133

Sec. or Subd. Page

BOARD OF PUBLIC WORKS (Continued).
Sewer work, to be authorized by ordinance when.... 2 157
Shall make what data for Supervisors.............. 10 140
Special meetings of, holding...................... 5 132
Street work, lien for payment..................... 9 138
Superintendents, engineers, and employees of....... 3 131
Superintendent of Streets, satisfaction of..........22 n. 154
Supervisors may order, to make corrections in warrant or diagram 14 189
Supplies to, contracts for..........................1 n. 56
To appoint storekeeper for corporation store-yard... 32 209
To approve map or plat of new streets, etc.......... 28 206
To assess benefits and damages on the opening etc. of streets 8 217
To be appointed by Mayor........................ 1 131
To be placed in possession of land used for opening etc. of streets when........................... 17 222
To be under charge of three Commissioners......... 1 131
To cause all urgent repairs upon streets to be made.. 30 208
To cause notices of resolution of intention to do street work to be posted........................ 3 159
To cause streets to be cleaned and sprinkled........ 29 207
To determine value of lots to be taken on the opening etc. of streets 8 217
To direct and superintend repair of school buildings.2 n 247
To grant permits for making connections with sewers and drains 4 226
To issue permits for repairs on unaccepted streets..16 n. 198
To keep register of accepted streets................. 23 201
To make estimate of expense of opening streets, etc.. 1 211
To make repairs on unaccepted streets at expense of city when ....30 n. 209
To pass on objections for opening etc. streets........ 5 215
To pass on ordinance for opening etc. of streets when. 6 215
To receive applications for street work............. 2 156
To succeed what officers 7 133
"Urgent necessity," judge of ....14 n. 143
Validity of bids ....16 n. 144
Wires, pipes, conduits 9 134
Same ....9 n. 140
Words of limitation, what are.....................1 n. 135
Work at street intersections or crossings, not at right angles; procedure 2 158
Work must be approved by.......................... 2 156
Work must be satisfactory to...................... 22 154
Written objections, to be a bar for six months....... 4 162

	Sec. or Subd.	Page
BOARD OF SUPERVISORS. See CLERK OF SUPERVISORS.		
Action on recommendation of Board of Public Works as to opening etc. streets	6	215
Advertisement of bills and resolutions; exception	13	17
Amount of bond of	2	332
Animals, cruelty to	19	40
Annual tax levy	5	63
Appeal to; in general	14 n.	190
Appeal to; notice of	14 n.	191
Appointments by	4	14
Approval of demands for supplies furnished to Board of Health not required	3 n.	292
Approval of demands of police court interpreters	19 n.	21
Authority of	4	14
Authority to Board of Public Works to condemn property for sewers, etc	9	227
Authority to Board of Public Works to construct sewers, etc.	8	227
Bids for proposals to be delivered to	1	54
Bids to be opened by, how and when	1	54
Board of Health to make recommendations to	4	293
Board of Public Works shall furnish what data for	10	140
Boulevards, designation of	25	42
Cannot allow extra compensation to salaried officers	1 n.	103
Cannot pass regulations in conflict with general laws	1 n.	27
Claims for damages against city, presentment of	8	52
Claims for damages must be presented to	8	52
Cleaning and sprinkling of streets	13 n.	36
Clerk of Board of Equalization	2	45
Clerk of; duties and powers	7	15
Contingent fund for the Mayor	35	45
Contracts for supplies, etc., to be let by	1	53
Control of streets	2	33
Convicts and felons, apprehension of	21	41
Decision of, on appeal is final	14	189
Demand of grant of street railway franchise; percentage returns	6	48
Demands for payment of money, approval by, of	19	21
Disposition of fines collected for cruelty to animals	19 n.	40
Drainage and sewerage, general system, to provide fund for	22	41
Duties and powers of, with respect to ordering street improvements	2	157
Duty of, on petition of electors to acquire public utilities	3	302

Sec. or Subd. Page

BOARD OF SUPERVISORS (Continued).

Effect of restrictions as to funds and payment.......3 n. 114
Eighteen in number 2 13
Election of eighteen 1 299
Electric power and lighting franchise; conditions; manner of granting 7 51
Exclusive power of, to make street improvements...1 n. 156
Expiration of street railway franchise, lease of such property 7 51
Fees and charges not otherwise provided............ 17 40
Finance committee, duty of, as to misdemeanors in office 4 47
Finance committee of; duties and powers........... 3 45
Finance committee of; majority.................... 4 46
Finance committee of; to examine official bonds..... 3 45
Finance committee of; to expert books.............. 4 46
Fourth of July appropriation....................... 18 40
Franchise and lease may be submitted to vote of people 7 51
Franchise and lease, when in force................. 7 51
Franchises for street railroads 6 47
Franchises granted by, to be forfeited when......... 6 47
Franchises, no exclusive, to be granted............ 5 47
Franchises to erect poles or to lay wires........... 7 51
General provisions as to passage of ordinances...... 1 27
Have no control over Park Fund.................. 8 329
Hours of labor for public service.................. 24 41
Injunction against ....19 n. 21
Insane, detention of 10 35
Interpreters, payment for 20 40
Is independent of Fire Commisioners..............1 n. 273
Jails, hospitals, etc., maintenance................. 11 36
Journal of proceedings 3 14
Lands, conveyance of certain 29 44
Leases of public lands 32 45
Lighting, contracts for 6 60
Same ....6 n. 61
Limitation on use of streets.......................1 n. 136
Limitation upon acquisition of land..............21 n. 24
Limited powers of ....1 n. 28
Local, police, and sanitary laws.................... 1 27
Matters as to which they have no power...........1 n. 29
May authorize Board of Public Works to purchase property for sewers, etc......................... 6 227
May authorize use of real estate for library purposes. 7 251
May change grade of streets....................... 20 224

	Sec. or Subd.	Page
BOARD OF SUPERVISORS (Continued).		
May determine appliances for cleaning and sprinkling streets	13	36
May grant permits for overhead electric wires	13 n.	36
May grant street railways right to operate on streets.	6	47
May pass what laws	1	27
May permit erection of engines and boilers	13 n.	36
May prescribe penalties for neglect to make repairs on streets	18	199
May reject any and all bids and invite new bids	5	60
May remedy errors on appeal	14	189
May submit proposition to acquire utilities when it has plans and estimates ready	3 n.	305
Mayor is ex officio president of	5	86
Mayor the presiding officer	5	14
Meetings; time and place	6	15
Memorial Day appropriation	18	40
Morgue, maintenance of	9	35
Must approve demand of all departments; exception	19 n.	21
Must approve demands before approval by Auditor	19	21
Must authorize payment of money out of Urgent Necessity Fund	8	64
Must make annual budget; public hearing	3	63
Must make annual requisitions for supplies	1	53
Must procure plans and estimates for public utilities from Board of Public Works through City Engineer	1	301
Must require bonds with sureties for faithful performance of contracts	1	54
Must solicit and consider offers for sale of utilities	2	302
Nature of duty of approving demands	19 n.	22
No exclusive franchise to be granted	5	47
No general authority to sell city property	1 n.	29
No general power to sell city's real property	29 n.	44
No license tax on sale of imported goods in unbroken packages	15 n.	38
No power to allow pay for overtime	17 n.	40
No power to devote cemetery lands to other than public uses	1 n.	29
No power to fix telephone rates	14 n.	37
No power to grant a telephone or telegraph franchise	6 n	50
No power to grant franchises, generally	6 n	50
Not required to make annual reports	9	338
Not to be interested in contracts, or supplies, or property of city	6	336
Nuisances, provisions for abatement of	6	34

Sec. or Subd. Page

BOARD OF SUPERVISORS (Continued).

Ordinance ordering paving or macadamizing done upon recommendation of Board of Public Works; procedure 24 201

Overhead wires not forbidden .... 27 n. 43

Passenger vehicles; regulations and fares 7 35

Payment of demands arising out of liabilities which are placed by law beyond their control .... 3 n. 114

Pipes, wires, conduits, franchises 5 47

Plans and estimates for public utility propositions .. 10 140

Pound; rules governing 8 35

Power of county boards .... 15 n. 39

Power of, to fix minimum wage .... 3 n. 132

Power of, on petition of electors to acquire utilities .. 3 302

Power of, to appoint and provide interpreters .... 1 n. 108

Power of, to compel attendance of absent members .. 3 n. 14

Power of, to punish for contempt .... 24 n. 343

Power of, to remove officer for cause 18 340

Power of, to revive claim barred by limitation of time 1 82

Power to appoint deputies of Registrar's office .... 1 n. 28

Power to fix amount of bonds of employees of Board of Public Works 4 132

Power to impose license tax on street cars .... 15 n. 38

Power to impose license tax on telephone companies. 15 n. 38

Power to order certain assessments canceled .... 1 n. 29

Power to permit railway on streets 3 33

Power to refund protested taxes .... 1 n. 28

Power to remit penalties on taxes .... 1 n. 29

Power to repeal or amend ordinance submitting a proposed ordinance to vote 20 22

Powers of 1 27

Property for public use, acquisition of 12 36

Purchase of land worth more than fifty thousand dollars, by .... 21 n. 24

Purchase of property levied on under execution 34 45

Qualifications; terms; salary 2 13

Quorum; majority to constitute 3 13

Railroad franchise, lease of, when and how 7 51

Railroads; fares, charges, rates of speed 27 42

Railroads; franchises, conditions 6 47

Railroads; terms for franchises 6 47

Railroads to enter city 28 43

Refunding license for selling fireworks .... 15 n. 38

Requests for plans and estimates for public utilities. 10 n. 140

Restrictions upon ordering street work to be done ... 2 n. 158

Right of appeal to 14 189

	Sec. or Subd.	Page
BOARD OF SUPERVISORS (Continued).		
Rules of Board	2	14
Sale of useless personal property	33	45
Seals; city departments, courts, etc	23	41
Sewers, flushing of	13	36
Shall authorize disbursement of public moneys	15	69
Shall call special election for acquisition of utilities when, and how	4	305
Shall fix amount of municipal revenues	14	68
Shall furnish Civil Service Commission with offices and supplies	1	324
Shall make levy for School Fund	2	245
Shall make provision for payment of bonds	14	68
Street car fare may be allowed when	17 n.	40
Street railway franchise; bond with bid, penalty for breach	6	48
Street railway franchise; conditions and manner of granting	6	47
Street railway franchise; construction of railway	6	49
Street railway franchise; forfeiture of	6	49
Street railway franchise; no renewal of	6	47
Street railway franchise; percentage returns	6	48
Street railway franchise; regulation of fares	6	47
Street railway franchise; reversion to city	6	49
Street railway franchise; rules for bidding	6	47, 48
Street railway franchise; statement of gross receipts.	6	48, 49
Street sweepings, disposition of	4	34
Streets, paving of, by railroads	28	43
Supervisors to declare determination, by ordinance, to acquire utilities	5	307
Sweepings of streets for park	4	34
Temporary suspension of dollar limit	13	68
To acquire property	12	36
To amend fire ordinances	5	34
To apportion revenue and income	12	67
To appropriate money for Mayor's contingent fund	35	45
To call for bids for gas and electric lighting	14 n.	37
To constitute Board of Equalization	2	45
To construct tunnels, etc.	26	42
To control wharves and harbors	1	228
To convey certain land	29	44
To direct Board of Public Works to procure and file plans and estimates of cost of utilities when	5	307
To establish prisons, hospitals, and almshouses	11	36
To fix fees and charges	17	40
To fix fire limits	5	34

	Sec. or Subd.	Page
BOARD OF SUPERVISORS (Continued).		
To fix freights on street railways	27	42
To fix hours and wages of laborers	24	41
To fix rate for water, heat, light, and power	14	37
To fix street railway fares	27	42
To fix tolls for wharfage and dockage	2	229
To fix water rates	14 n.	37
To fix width and grade of streets	1	155
To impose license taxes; exemption	15	37
To lease lands of the city	32	44
To levy tax for benefit of Library Fund	2	248
To offer rewards	21	41
To order street work done	1	155
To permit entry of steam railroads into city; conditions	28	43
To permit temporary laying of street railway tracks in streets	3	33
To prescribe fines and penalties	16	40
To provide a morgue	9	35
To provide a public pound	8	35
To provide for purchase of certain property under execution	34	45
To provide for relief of exempt firemen	36	45
To provide for the abatement of nuisances	6	34
To provide general drainage system	22	41
To provide official seals for departments, courts, etc.	23	41
To provide places for detention of witnesses, etc.	10	35
To regulate and control water, heat, light, power, etc.	13	36
To regulate passenger vehicles	7	35
To regulate street railways	27	42
To regulate use of streets, sidewalks, etc	2	33
To select corporation store-yard	32	209
To sell useless property	33	45
To transfer vacant lands	31	44
To undertake proceedings for acquisition of utilities when	4	306
Trading-stamp clearing-house, prohibitory tax	15 n.	38
Trusts for city, execution of, by	30	44
Tunnels, construction of	26	42
Unused lands, transfer to other departments	31	44
Veto of separate items by Mayor	14	18
Violation of ordinances; penalties	16	40
Vote required to pass ordinance for street railway franchise	6	49
Water, gas, heat, light, etc.; rates	14	37
Water, heat, light, power	13	36

Sec. or Subd. Page

BOARD OF SUPERVISORS (Continued).

When member of Board shall be chosen president pro tempore 6 87

Witnesses, detention of 10 35

Wooden buildings, limits of, restricted 5 34

BOARDS. IN GENERAL.

Power of, to administer oaths 24 342

Powers of, to punish for contempt 24 342

BONDED INDEBTEDNESS.

May be incurred for public school purposes .... 29 n. 346

BONDSMEN.

Eligibility of 7 124

BONDS OF OFFICIALS.

Additional bonds may be required when 5 333

Amount of bonds of each official 2 331

Approval of, by Mayor and Auditor 1 331

Article on 1-7 331-334

Bonds of deputies and employees 7 333

Book entitled "Record of Official Bonds" 1 331

Liability on 6 333

Must be recorded 1 331

Must contain certain conditions 3 332

Officers to give bonds 1 331

Qualifications of sureties 4 333

Sureties on 3 332

BOOKS AND RECORDS.

Custody of records 12 339

Of Police Department not subject to inspection unless by permission of Police Commissioners or Chief of Police 13 339

Right to certified copies of 13 339

To be open to inspection 13 339

BOULEVARDS.

Designation of 25 42

BRIBERY.

Of officer is prohibited 8 337

BUILDING CONSTRUCTION.

Control of, by Board of Public Works 5 137

BUILDINGS. See PUBLIC BUILDINGS.

CASHIER OF ASSESSOR.

Exemption of, from Civil Service provisions 11 319

CASHIER OF COUNTY CLERK.

Exemption of, from Civil Service provisions 11 319

CEMETERIES.

Ordinances forbidding further burials in .... 1 n. 30

Permits by Board of Health for deposit of bodies in receiving vaults of .... 3 n. 292

Sec. or Subd. Page

CEMETERY LANDS.

  Must be devoted to public uses.................... 1 n. 29

  Supervisors have no power to devote, to other than public purposes .... 1 n. 29

CENSUS MARSHALS. See Board of Education.

CERTIFICATES. See City Board of Examination and Superintendent of Schools.

CHANGE OF GRADE ACT. .... 1 n. 211

CHARTER AS A WHOLE—PARAMOUNT LAW..... 364-367

  Adoption of amendments 365

  Adoption of Charter 364

  Amendment of Charter 365

  Attacking Charter; party defendant 367

  Charter as a statute 367

  City and County of San Francisco 364

  Effect of the Charter 365-366

  General laws, what are 366

  General laws, what are not 366

  Municipal affairs, what are 366

  Municipal affairs, what are not 367

  Paramount law 367

  Recording of Charter 365

  Right of Freeholders to prepare and propose Charter 364

CHIEF BOOK-KEEPER OF SHERIFF.

  Exemption of, from Civil Service provisions 11 320

CHIEF DEPUTY CORONER.

  Exemption of, from Civil Service provisions 11 319

CHIEF DEPUTY OF ASSESSOR.

  Exemption of, from Civil Service provisions 11 319

CHIEF DEPUTY OF RECORDER.

  Exemption of, from Civil Service provisions...... 11 319

CHIEF DEPUTY OF TAX COLLECTOR.

  Exemption of, from Civil Service provisions 11 320

CHIEF ENGINEER OF FIRE DEPARTMENT.

  Assistants of, duties 1 279

  Chapter on 1-3 279-280

  Exemption of, from Civil Service provisions 11 320

  In cases of conflagration may order supplies drawn from corporation yards when 9 276

  Is chief executive officer of Fire Department...... 1 279

  Power of suspension 2 279

  Power of, to destroy buildings in case of conflagration 3 279

  Powers and duties of 1-2 279

  Term of Chief of Fire Department .... 1 n. 279

  To be appointed by Board of Fire Commissioners.. 1 279

	Sec. or Subd.	Page
CHIEF OF POLICE.		
Appointees of; salaries	5	257
Control of, over pawn shops, etc.	7	258
Exemption of, from Civil Service provisions	11	320
Is a member of Board of Health ex officio	1	290
Is chief executive officer of Police Department	3	257
Is chief of Police Department	1	252
Law books in office of	4	257
May detail whom, for detective duties	6	260
Must detail officer for detective work in City Attorney's office	5	111
Must detail police-officer to serve process on	24	342
Power of, to disburse Contingent Fund	6	258
Power of, to examine premises	7	258
Power of, to examine property pledged or pawned	7	259
Power of, to suppress riot	2	257
Power of, where property has been feloniously obtained	7	258
Powers and duties of	1	256
Same	4	257
Right of, to absent himself from state	3	335
Shall detail bailiffs for Police Court	5	258
Shall detail officers for service in parks, etc.	7	328
Subordinate officers of Police Department, duties of, and salaries	1-6	259-260
Term and salary	1	256
Who to act when Chief is absent from office	4	257
CHINESE. See Schools.		
CITY AND COUNTY HOSPITAL.		
Internes to, how appointed and controlled	9	294
Resident physician of, how appointed	6	293
Setting aside one ward in, for treatment of inebriates	8	294
Two visiting physicians for, how appointed	7	294
CITY AND COUNTY OF SAN FRANCISCO.		
Actions by or against	4	10
Actual residence, how determined	2 n.	335
All claims for damages against, must be presented to Supervisors	8	52
Boundaries of	2	10
Boundaries, rights and liabilities	1-5	9
"City and County" defined	1	335
Deputies and employees of; qualifications of all	2	335
Duties of officers as to contracts with	3	85
Effect of change in form of government	3 n.	10
Execution of trusts by	1 n.	9
Has no interest in what tax-moneys	2 n.	93

	Sec. or Subd.	Page
CITY AND COUNTY OF SAN FRANCISCO (Continued).		
Holds park property in trust for the public	1 n.	324
Liabilities of	4 n., 5	11
Liability of, for claims of state hospitals	5 n.	12
Liability of, for cost of advertising	4 n.	11
Liability of, for defects in sidewalks, streets, or sewers	5	11
Liability of, for funds deposited with Treasurer	3 n.	94
Liability of, for mob violence	3 n.	255
Liability of, for negligence of officers	5 n.	12
Liability of, for precedent obligations	4 n.	11
May accept a gift	1	10
Name and powers of	1	9
Payment of claims against	3	85
Power of, to institute action for forfeiture of franchise	3	86
Rights of	3	10
Status of		364
Supervisors cannot convey lands of	1 n.	29
Supervisors have no general power to sell real property of city	29 n.	44
Title to property for library and reading rooms to vest in	4	249
CITY AND COUNTY SURVEYOR.		
Board of Public Works to take papers of	8	134
CITY ATTORNEY.		
Amount of bond of	2	331
Appointees and assistants; salaries	5	111
As a municipal officer	1	110
Certificate of, as basis for court to place Board in possession of land taken in opening etc. of streets	17	222
Detective work in office of	5	111
Duties and powers of	2	110
Duty of, to appear in actions	2 n.	110
Duty of, to keep records of city's legal proceedings	3	111
Duty of, to prosecute all actions brought under section 14, chapter II	14	81
Election of	1	299
Must appear in actions by or against Board of Education	8	236
Must deliver records to successor	4	111
Office hours of	1	110
On demand of Mayor must institute and prosecute what actions	3	86
Qualifications of assistants and chief clerk of	5	111
Salary, term, qualifications	1	109

Sec. or Subd. Page

CITY AND COUNTY OF SAN FRANCISCO (Continued).
- Services of, may be commanded by Board of Education 8 236
- Stenographers and typewriters for 5 111
- To act for Board of Public Works when 14 221

CITY BOARD OF EXAMINATION. See Board of Education.
- Certificate cannot be refused when 4 244
- Power to revoke certificates 3 244
- Powers of 6 243
- Teachers' certificates, examination for 6 243
- To examine applicants 6 243
- To recommend applicants for special certificates 2 243

CITY ENGINEER.
- Certificate of, and its validity ....11 n. 141
- Duty of, to make surveys ....11 n. 141
- Exemption of, from Civil Service provisions 11 320
- Fees of, to be paid into treasury ....11 n. 141
- Same 12 141
- Plans and estimates to come through 1 301
- Powers and duties of 11-12 141
- Service of, to be exclusive; salary 12 141
- To be appointed by Board of Public Works 11 140

CITY EXPOSITION BUILDINGS.
- Lease by Park Commissioners for purposes of 9 329

CIVIL SERVICE.
- Annual report of Commissioners 15 322
- Application of, to Fire Department ....1 n. 276
- Appointment by Recorder ....11 n. 320
- Appointment on probation 10 318
- Appointment, promotions, or changes, notice of 13 321
- Article on 1-20 315-323
- Candidates highest on register 9 318
- Certificate to Auditor of appointment; vacancies .. 19 323
- Chief Examiner to be Secretary of Commission...... 16 322
- Classification of service 2 315
- Commissioners may require applicants to be American citizens ....4 n. 316
- Commissioners of; appointment of 1 315
- Commissioners, qualifications, terms of office, salary. 1 315
- Commissioners to prepare register of each class of positions 7 317
- Conditions of discharge 10 318
- Constitutionality of sections 12 321
- Construction of article ....11 n. 320
- Departments governed by article on 11 319

Sec. or Subd. Page

CIVIL SERVICE (Continued).
- Deputies, clerks, and employees, exempt from........ 11 319
- Dismissals for cause only 12 320
- Duties of Commissioners 14 321
- Duty of heads of departments 9 318
- Examination of applicants, public, competitive, and free 4 316
- Examinations, rules and regulations 3 315
- Examinations to be practical in character 4 316
- Examiners may be appointed 5 316
- Investigation of charges 13 320
- Method of Commissioners 7 317
- No aid, hindrances, fraud, or collusion permitted.... 18 322
- Notice of appointments, promotions, or changes 13 321
- Notice of examinations 6 316
- Officers and departments under 11 319
- Offices and supplies 17 322
- Penalty for violation of article 20 232
- Positions for limited periods ....7 n. 317
- Positions, rules governing 9 318
- Promotions, basis of, eligibility, rating 8 318
- Prosecution for violation of 20 322
- Protection to police force by Civil Service article....1 n. 265
- Provisions of, applicable to Board of Election Commissioners 4 298
- Purpose of examinations ....7 n. 317
- Purposes of, not to be defeated; how............... 18 322
- Registration of successful applicants............... 7 317
- Rules of, workable system ....7 n. 317
- Secretary of Commission, duties, salary 16 322
- Selection of laborers, how governed................ 5 316
- Sex to be disregarded in certification 9 318
- Suspension 12 321
- Temporary appointments 10 318
- Three Commissioners to be appointed by Mayor 1 315

CIVIL SERVICE COMMISSIONERS.
- Dismissal of member of Police Department without approval of ....3 n. 263
- General powers of 1-2 254-256
- Meetings of; ayes and noes 4 253
- Organization of 4 253
- Political affiliations 2 253
- Power of, as to sale and disposition of unclaimed property 5 256
- Power of, to appoint Special Police officers 4 255
- Power of, to dismiss and appoint 1 254

	Sec. or Subd.	Page
CIVIL SERVICE COMMISSIONERS (Continued).		
Power of, to grant permits for sale of liquor	3	255
Power of, to prescribe rules and regulations	2	254
Powers of	1-2	254-256
President; salary	4	253
Qualification, term, salary	1-3	253
Secretary; salary	4	253
Shall succeed whom in office	2	253
To be appointed by Mayor	1	253
CLAIMS, PAYMENT OF. See PAYMENT OF CLAIMS.		
CLERK OF SUPERVISORS.		
All bids shall be sealed and delivered to	1	54
Amount of bond of	2	332
Certificate of deposit or check with contract payable to	1	54
Duties and powers of	7	15
Duties of, on appeal to Board	14	189
Duty of, petition of electors to acquire utilities	3	302
Must advertise for proposals for furnishing supplies	3	57
Must countersign all contracts	5	60
Power of, over certificate of deposit or check accompanying contract	1	54
Resolution of intention to open etc. streets to be transmitted to	6	215
Shall furnish printed blanks for contracts, bonds, etc.	1	54
Shall have custody of stationery and distribute same	3	58
Shall have rooms in City Hall	3	58
Shall make monthly report in writing of what	3	58
Shall sign final estimate for budget	4	63
To deliver goods upon requisition after approval by Mayor	3	58
CLERKS. See appropriate heads.		
CLERKS AND STENOGRAPHERS OF JUSTICES' OF PEACE COURTS.		
Civil Service provisions as to	11	319
COLORED CHILDREN. See SCHOOLS.		
COMMISSIONERS. See appropriate heads.		
COMMISSIONERS OF PUBLIC WORKS.		
Amount of bond of	2	332
COMMISSIONS FOR OPENING ETC. OF STREETS.		
Board of Public Works successor to	7	133
Board of Public Works to take papers of	8	134
COMMON SCHOOL FUND. See BOARD OF EDUCATION.		
All demands payable out of; approval of	13	80
Demands against	13	80
Levy of tax for benefit of	1-2	244-245
Surplus moneys in	16	69

	Sec. or Subd.	Page
COMPENSATION. See specific heads.		
COMPLAINT IN ACTION ON ASSESSMENT	15	191-193
See ASSESSMENTS.		
CONDEMNATION PROCEEDINGS.		
Certificate in	16	222
Confirmation of report and judgment	12	221
Disbursement of compensation in	16	222
Duties of clerk of court	13-15	220
In opening etc. of streets	12 n.	219
Same	13	219
Same; courts to adjudicate conflicting claims	18	223
Judgment of confirmation; lien	13	220
Jurisdiction and judgment of court	13	219
Lien upon lands	13	219
Of private property for sewers, etc.	9 n.	228
Supervisors to acquire property by	12	36
CONSTITUTIONAL PROVISIONS.		
Respecting amendments to Charter	22 n.	25
Same		n., 365
CONTINGENT FUND.		
Fund for Mayor	35	45
Power of Chief of Police in disbursing from	6	258
CONTRACTS.		
Advertisements for bids shall state what	3	57
Advertising of delinquent tax list	2 n.	57
Alterations and erasures	1 n.	56
Are void where officer is interested in	6	337
Articles subject to inspection and rejection	1	54
Award of, by ordinance	1	53
Bids with alterations or erasures to be rejected	1	54
Bonds to be required	1	53-54
Clerk of Supervisors to furnish printed blanks	1	54
Collusion with bidder constitutes misfeasance	4	59
Control of expenditures by Board of Health	1 n.	55
Copy of schedule to be annexed to executed contract	1 n.	56
Defaulting bidder has no right to return of certificate or check	1	54
Delinquent tax list as official advertising	2 n.	57
Deposits to be made with bids	1	53
Execution, signing, and registration of	5	59
For city work, maximum hours, minimum wages	1	55
For lighting	6 n.	61
For printing forms and blanks	5 n.	60
For stationery shall be separate from those for printing	3	57
Forms for printing	3	57

Sec. or Subd. Page

CONTRACTS (Continued).
- Hospital supplies ... 1 ... 55
- Indorsement of Auditor upon; exception ... 10 ... 66
- Lighting contracts, term, rate, demands ... 6 ... 60
- "Lowest responsible bidder," meaning of ... 2 n. ... 57
- Must be let to lowest bidder ... 1 ... 53
- New bids may be invited ... 5 ... 59
- No contract to be let except upon competitive bidding ... 1 ... 53
- Notice for proposals for supplies ... 3 ... 57
- Notices for proposals for furnishing articles ... 1 ... 54
- Number and rejection of bids ... 1 n. ... 56
- Obligation of; time ... 5 n. ... 60
- Official advertising includes what ... 2 ... 56
- Official newspaper ... 2 ... 56
- Penalties for non-compliance with provisions of Charter ... 1 ... 55
- Penalty for failure to enter into ... 1 ... 54
- Printing ... 2 ... 56-57
- Prohibition as to names on stationery ... 3 ... 58
- Proposals to be advertised ... 1 ... 54
- Publication of specifications for lighting ... 6 n. ... 61
- Requisitions for printing, how made ... 3 ... 58
- Resolution of award of, need not be published ... 1 n. ... 56
- Resolution of award of, sufficiency of ... 1 n. ... 56
- Sealed bids ... 1 ... 54
- Statements required in notice for proposals ... 1 ... 54
- Stationery ... 3 ... 57-58
- Supervisors shall make annual requisition ... 1 ... 53
- Supplies, bids for separate articles ... 1 ... 54
- Supplies for stationery for various departments ... 3 n. ... 59
- Supplies for subsistence of prisoners ... 1 ... 54
- Supplies to Board of Public Works ... 1 n. ... 56
- To be in writing ... 5 ... 60
- Unauthorized publications ... 2 ... 56
- Validity of, where officer is interested in ... 6 ... 336
- When void ... 1 ... 55
- With Fire Department; performance of ... 4 ... 278

CONTRACTS FOR STREET-WORK OR OTHER PUBLIC IMPROVEMENT.
- Adoption of specifications ... 21 n. ... 151
- Affidavit of contractor ... 6 ... 169
- Agent of city in making ... 21 n. ... 152
- Are void when ... 21 n. ... 150
- Assignment of, and its effect ... 21 n. ... 152
- Attorney's fee for recovery of assessment ... 15 ... 191

Sec. or Subd. Page

CONTRACTS FOR STREET-WORK OR OTHER PUBLIC IMPROVEMENT (Continued).
  Award and subsequent proceedings, when void......17 n. 146
  Award of ......17 n. 146
  Award of contract for urgent repairs...... 30 209
  Certified check ......17 n. 146
  City Attorney to draw 21 148
  Cleaning and sprinkling of streets by public contract 29 207
  Commencement and completion of work ......21 n. 151
  Completion of contract 6-7 169-170
  Contractor may collect assessments 12 183
  Contractor may sue for amount due on repairs when 17 198
  Contractor may sue for unpaid assessments when.. 15 191
  Contractor must demand payment of lawful assessments 13 187
  Contractor's fraud upon owners, effect of ......6 n. 169
  Contracts, bonds, etc., provision as to 21 148
  Contracts for materials 31 209
  Demand for payment ......13 n. 188
  Different kinds of work ......21 n. 151
  Enforcement of contract as an entirety ......21 n. 151
  Extension of time for doing work ......21 n. 152
  Extension of time not ineffectual when ......21 n. 152
  Form of bond ......21 n. 153
  For over five-hundred-dollar repairs 30 208
  Hours of labor ......21 n. 153
  Mayor's approval of award of contract not necessary ......17 n. 146
  Must follow resolution and award ......21 n. 151
  Omission to approve bonds, effect of ......21 n. 153
  Owner as party ......21 n. 150
  Partial payments on ......21 n. 153
  Payment may be made before suit 13 187
  Private agreement which nullifies contract 6 169
  Public demand for payment ......13 n. 188
  Recording of ......21 n. 152
  Requisites of ......21 n. 149
  Separate contracts for subdivisions of public building ......21 n. 153
  Specifications as part of ......21 n. 150
  Time to complete work, penalty, etc. 21 148
  Validity of ......21 n. 150
  Various provisions as to bonds, etc. 21 148
  What does not validate the contract ......6 n. 170
  What is no excuse for non-performance ......21 n. 152
CONVICTION OF FELONY.
  Causes office to become vacant ......10 n. 338

	Sec. or Subd.	Page
COPYISTS. See appropriate heads.		
CORONER.		
Amount of bond of	2	331
Appointees of, salaries	2	106
Chapter on	1-2	105-106
Civil Service provisions as to	11	319
Duties of	1	105
Election of	1	299
Is a county officer	1 n.	106
Office hours of	1 n.	106
Qualifications, term, salary	1	105
To have control and management of morgue	1	106
CORPORATION STORE-YARD.		
Delivery of articles	32	209
Old paving materials	32	209
Storekeeper, duties, liabilities	32	209
COUNTERCLAIM AND SET-OFF.		
In action to recover street assessments	15	193
COUNTY CLERK.		
Amount of bond of	2	331
Appointees of, salaries	2	116
Chapter on	1-3	115-116
Charges for certification of papers	3	116
Charges for copies of papers	3	116
Civil Service provisions as to	11	319
Duty of, as to collateral inheritance taxes	1 n.	116
Duty of, as to recording sales in foreclosure or partition cases	1 n.	116
Election of	1	299
Is a county officer	1 n.	116
Must make monthly payments to San Francisco Law Library	1	130
Office hours of	1 n.	116
Salary of	1	115
Shall act as clerk of Police Court	1	115
Term, powers, and duties	1	115
COUNTY OFFICERS.		
Election of	1	299
CRIMINAL LIBEL.		
Police Court cannot try	2	121
CUSTODY OF PUBLIC MONEYS.		
All moneys to be paid into the treasury	1	74
Chapter on	1-14	74-81
Disbursement of public moneys	1	74

Sec. or Subd. Page

DAMAGES.
  Claims for, against city must be presented to Supervisors 8 52
DEFICIT.
  Creation of 6 73
DEFINITIONS. See Words and Phrases.
DELINQUENT TAXES.
  Attorney to collect; compensation 3 104
  List of properties to be sold for; publication of ....25 n. 343
  Publication of list of property to be sold for ......2 n. 104
  Special counsel to collect, is unauthorized when..... 3 104
DEMAND.
  Against School Funds; proceedings as to 10 238
  Allowances of, by Auditor, in general 13 80
  Approval of, in general 13 80
  Auditing, payment, and approval 13 80
  Cancelation of paid demands 6 95
  Demands of all departments, approval of ....19 n. 21
  Duty of approving, is ministerial ....19 n. 22
  Each, must show what five facts 13 80
  Each, shall have what written or printed upon it.... 13 80
  Must be first approved by Supervisors 13 80
  Same ....19 n. 21
  Of Auditor for salary to be audited and allowed by Mayor 13 80
  Of, in general, approval of before payment by Supervisors 13 80
  On account of salaries must show what facts 13 80
  Order of Supervisors need not specify fund........19 n. 21
  Payable in order of registration 6 95
  Payable out of Common School Fund, approval of.. 13 80
DEPARTMENT OF ELECTIONS. See Board of Election Commissioners.
  Appointment of clerks, etc.; salaries........4 n. 298
  Article on 296-300
DEPARTMENT OF ELECTRICITY.
  Assistants, salaries 3 288
  Chapter on 1-6 287-289
  Chief of, may be required to give bond ....2 n. 288
  Citizens may connect with system 5 288
  Control of 1 287
  Creation of 1 287
  Electrician, duty, salary 2 287
  Jurisdiction over systems and wires 4 288
  Shall have control of what 1 287
  To supervise electric wires and appliances 6 289

Sec. or Subd. Page

DEPARTMENT OF PUBLIC HEALTH. See BOARD OF HEALTH.
  Article on 1-10 290-295
DEPARTMENT OF PUBLIC WORKS.
  Article on 1-22 131-155
  Works to be let how 14 142
DEPARTMENTS OF CITY GOVERNMENT.
  Transfer of vacant lands from one department to another 31 44
DEPUTIES. See appropriate heads.
DEPUTIES AND CLERKS.
  Appointments of, to be in writing, in duplicate 22 341
DEPUTIES AND EMPLOYEES.
  Removal of appointed 21 341
DEPUTY AUDITOR.
  Exemption of, from Civil Service provisions 11 320
DEPUTY REGISTRAR OF VOTERS.
  Not to take part in politics 2 297
DISBURSEMENT.
  Of public moneys 1 74
  Of public moneys, Supervisors to authorize 15 69
DISQUALIFICATIONS.
  From holding office 15 339
DISTRICT.
  Procedure as to making improvements chargeable upon 5 167
DISTRICT ATTORNEY.
  Amount of bond of 2 332
  Appointees of 3 113
  Assistants of, salaries, duties, qualifications 3 113
  Chapter on 1-4 112-114
  Clerks of, salaries 3 113
  Duty of, as to collateral inheritance taxes .... 1 n. 112
  Duty of, to give legal advice 2 113
  Election of 1 299
  Is a county officer .... 1 n. 112
  Must keep register of official business 2 112
  Office hours of .... 1 n. 112
  Police Court, prosecutions by 2 112
  Powers and duties of 2 112
  Quarterly statements by 2 112
  Salary of additional, must be paid .... 3 n. 114
  Stenographers and typewriters for 3 114
  Term, salary, qualifications 1 112
  To bid for and purchase property at execution sales 4 114

Sec. or Subd. Page
DOLLAR LIMIT.
On tax levy 11 67
Procedure in temporarily suspending 13 68
Temporary suspension of 13 68
DRAINAGE.
Control of, by Board of Public Works 2 137
EFFECT OF THE CHARTER........................ 365
ELECTION. See Acquisition of Public Utilities.
To adopt ordinances 20-21 22-23
ELECTION COMMISSIONERS. See Board of Election Commissioners.
ELECTRIC LIGHT COMPANIES.
Permit to, to use streets ....1 n. 136
ELECTRIC POWER.
Providing for 13 36
Rates for 14 37
ELECTRIC WIRES.
Permits for overhead ....13 n. 36
ELEVATOR INSURANCE.
Not authorized ....6 n. 137
ELISORS.
May act when ....1 n. 117
EMERGENCY REPAIRS.
Not covered by provision as to tearing up of streets.9 n. 140
EMPLOYMENT.
Of extra assistants; monthly statements; payment for services 12 79
ENGINES AND BOILERS.
Permits for operating ....13 n. 36
Permits to erect ....13 n. 36
EQUALIZATION BOARD.
Clerk of Supervisors as clerk of 2 45
Supervisors as 2 45
EXECUTION.
Purchase of property levied on 34 45
EXECUTION SALES.
Right of District Attorney to bid for and purchase property at ....
EXEMPT VOLUNTEER FIREMEN.
Relief of 36 45
EXPERT.
Employment of, by grand jury ....1 n. 109
Is entitled to compensation when 34 348
EXPERT WITNESSES.
Power to provide compensation for ....1 n. 30

Sec. or Subd. Page

EXTRA ASSISTANTS.
  Employment of; monthly statements; payment for services 12 79
FARES AND FREIGHT.
  On street railways; regulation of.................. 27 42
FEE FUND.
  Transfer of balance in............................ 37 350
FEES.
  Must be paid to Treasurer........................ 3 76
  Not to be allowed to salaried officers or employees.. 2 75
FEES AND CHARGES.
  Power of Supervisors to fix....................... 17 40
FENCES.
  Regulating height of, for advertising purposes......1 n. 30
FINANCE AND TAXATION.
  Article on 62-84
FINANCE COMMITTEE.
  Duties and powers of............................. 3 45
  To examine official bonds........................ 3 45
  To expert books of quasi-public corporations........ 4 46
FINES.
  Power of Supervisors to prescribe................. 16 40
FIRE ALARM AND POLICE TELEGRAPH AND TELEPHONE SYSTEMS.
  Citizens may connect with, when................... 5 288
  Construction and maintenance of; who shall have... 1 287
FIRE COMMISSIONERS. See BOARD OF FIRE COMMISSIONERS.
FIRE COMPANIES.
  Compensation of 1 280
FIRE DEPARTMENT. See BOARD OF FIRE COMMISSIONERS, and other specific heads under FIRE, etc.
  Article on 273-288
  Civil Service provisions as to.................... 11 319
  Constitution of; present and future................ 1 276
  Duties of Clerk and Commissary.................. 9 276
  Fair public trial before dismissal from............. 2 277
  Ineligibility of member of, to office................ 31 347
  Liability of City and County for negligence of......1 n. 273
  Member of, to have no other employment........... 10 276
  Members of, not to participate in politics........... 32 347
  Organization and powers of.......................1-10 273-276
  Political affiliations of members.................. 2 273
  Political opinions to be disregarded................ 7 275
  Qualifications of firemen 6 273
  Resignations; construction of section.............. 7 275

Sec. or Subd. Page

FIRE DEPARTMENT (Continued).
- Right to salary after lay-off .... 1 n. 277
- Salaries of officers and members of 1 286
- Salary during disability 3 277
- To have sole control over its own system and wires 4 288
- Trial before dismissal 7 275
- Vacations upon salary 8 275
- Withdrawal of materials from stores of, in case of conflagration 9 276

FIRE DEPARTMENT CORPORATION YARDS.
- Delivery of supplies by commissary of; restrictions upon 9 276
- Delivery of supplies of stores by clerk of; restrictions upon 9 276

FIRE LIMITS.
- Power of Supervisors to fix 5 34

FIRE MARSHAL.
- Appointment of assistants 1 280
- Chapter on 1-5 279-282
- City and County not liable for salary of 1 280
- Deputies to inspect buildings; how paid 5 282
- Duties and powers of 2-4 281
- Duties of, as to unclaimed property 4 281
- May sell property saved when 4 281
- Power of, in protecting property 3 281
- Power of, to appoint deputies to inspect buildings 5 282
- Salary of; how fixed and paid 1 280
- Shall exercise functions of a police officer 4 281
- Report of, when crime is suspected 4 281
- Vacancy in office; how filled 1 281

FIRE PENSION FUND COMMISSIONERS. See SECRETARY OF FIRE PENSION FUND COMMISSIONERS.
- Firemen's Fund book, who to keep 8 286
- How constituted 1 282
- List of pensioners, how to be certified and signed 8 286
- Powers of; in general 9 286
- Provision for payment of expenses 9 286
- Records, powers, rules, and proceedings 8-9 286
- Secretary of 9 286
- Shall hold quarterly meetings when 8 285
- Shall issue warrants and pensions when, and how 8 285
- Shall keep public record of its proceedings 8 285
- Shall make estimate of annual pensions 7 285
- Shall make rules and regulations concerning pensions 7 285
- To receive no compensation 9 286

Sec. or Subd. Page
FIRE PENSION FUND COMMISSIONERS (Continued).
  Warrants, signing, presentment, auditing, and payment 8 286
FIRE WARDENS.
  Fire-trap theater cases .... 1 n. 282
  How constituted; safety of buildings 1 280
FIREMEN'S RELIEF AND PENSION FUND.
  Surplus moneys in 16 69
FIREMEN'S RELIEF FUND.
  Amount of pension .... 4 n. 283
  Annual pension allowed and paid when 4 283
  Board of Trustees of; how constituted 1 282
  Creation of 1 282
  Estimate of annual pensions 7 285
  Forfeiture of pension 6 285
  Issuance of warrants for pensions 8 285
  List of pensioners; requirements as to 8 285
  Monthly pension allowed and paid when 3 283
  Object of Charter-framers 4 283
  Provisions for family of member killed 5 284
  Qualifications requisite to pensioners 3 283
  Quarterly meetings of Commissioners 8 285
  Restoration to rank, when disability ceases 4 283
  Retirement for physical disabilities 4 283
  Rules and regulations concerning pensions 7 285
  Tax for benefit of 2 283
  What disability justifies pension .... 4 n. 284
  Who are entitled to pensions 4 284
FIREWORKS.
  Refunding of license tax for selling .... 15 n. 38
FISCAL YEAR.
  Commences when 16 340
  Each, is to pay its own debts .... 6 n. 73
  Same .... 9 n. 65
  Each year's revenues must meet each year's expenses .... 11 n. 67
  Right to change .... 16 n. 340
FORFEITURE.
  Of franchise to telephone companies .... 6 n. 51
  Power of Supervisors to prescribe 16 40
FORFEITURE OF OFFICE.
  By becoming interested in contracts 6 337
  By making gift or promise 7 337
FOURTH OF JULY.
  Appropriation for, by Supervisors 18 40
FRANCHISE.
  As to street railways are in force when 7 51

Sec. or Subd. Page

FRANCHISE (Continued).
  Conditions and manner of granting electric power and lighting franchise 7 51
  Forfeiture of, to telephone company .... 6 n. 51
  Lease of property after expiration of franchise 7 51
  No exclusive franchise to be granted for what 5 47
  Not in use, declared forfeited 26 343
  Power of Supervisors to grant 6 47
  Power of Supervisors to grant street railway franchises 6 47
  Question of granting franchises may be submitted to vote of people 7 52
  Supervisors have no power to grant, for telephone or telegraph .... 6 n. 50
  Time allowed for commencing and completing work in order to hold .... 26 n. 343
FREEHOLDERS.
  Right of, to prepare and propose Charter .... n., 364
FUNDS. See The Several Funds.
GAS AND ELECTRIC LIGHTING.
  Rates for 14 37
GEARY STREET FRANCHISE.
  Expired when .... 6 n. 51
GENERAL FUND.
  Balances of unnecessary funds to be transferred to .... 38 n. 352
  Consists of what .... 2, 2 n. 69, 70
  Moneys to be paid out of 37 349
  Special provision for payments from 37 351
GENERAL LAWS.
  What are 366
  What are not 366
GIFTS AND BEQUESTS.
  City and County may accept 1 9
  To Library Fund 3 249
GOVERNMENT.
  Change in; effect of .... 3 n. 10
GRADE AND CHANGE OF GRADE OF STREETS. See Streets.
  In general .... 20 n. 224-225
  Initiatory steps, how taken .... 20 n. 224
  Opening of new streets, method of .... 28 n. 207
  Procedure; explanation of .... 20 n. 225
GRAND JURY.
  Employment of experts by .... 1 n. 109
HARBORS AND WHARVES.
  Are under control of Supervisors 1 228

Sec. or Subd. Page

HARBORS AND WHARVES (Continued).
- Chapter on 1-2 228-229
- Right to use wharves............................1 n. 229
- Tolls for wharfage and dockage.................. 2 229
- "Wharfage" and "Dockage," distinction between....2 n. 229
- Wharves may be leased but not sold............... 2 229
- Wharves to be built and repaired by Board of Public Works 1 228

HARMONIZING SECTIONS.
- As to fixing compensation of employees.............3 n. 132
- Of street law ....9 n. 181

HEALTH DEPARTMENT. See Board of Health.

HEALTH OFFICER. See Board of Health.
- Police Officer is, ex officio......................... 3 261
- Salary of; how fixed............................5 n. 293

HEAT.
- Furnishing of 13 36
- Rates for 14 37

HOSPITALS.
- Management and control of, by Board of Health.... 3 291
- Supervisors to establish........................ 11 36
- Supplies for; how let...........................1 n. 55

HOURS OF LABOR.
- Charter provisions as to......................... 21 153
- Purpose of Charter as to.......................21 n. 153
- Supervisors to fix............................... 24 41
- Violation of provision as to; remedy.............. 21 153

IMPROVEMENT OF STREETS. See Streets; Opening etc. and Changing Grade of Streets; and Grade and Change of Grade of Streets.
- Chapter on 1-32 155

INDEBTEDNESS.
- Liabilities that are prohibited..................... 13 68
- Restrictions on incurring........................9 n. 65
- Same ....13 n. 68

INDORSEMENT.
- Of Auditor upon contract; exception............... 10 66

INEBRIATES.
- Treatment of; provision for...................... 8 294

INSANITY COMMISSIONERS.
- Amount of bond of.............................. 2 332

INSURANCE. See Elevator Insurance.

INTEREST.
- Annual tax for, on serial bonds.................. 12 313

INTEREST FUND.
- Surplus moneys in 16 69

	Sec. or Subd.	Page
INTERPRETERS.		
Appointment; compensation of	20	40
Compensation of; how provided, and amount	20	40
ISSUANCE OF BONDS FOR PUBLIC BUILDINGS OR IMPROVEMENTS.		
Bonds for library site; how to be voted on	29 n.	346
Bonds for municipal improvements	29 n.	345
City may bond itself for public school purposes	29 n.	346
"Improvement" includes school houses, sewers, etc.	29 n.	344
Land for park and boulevard purposes	29 n.	346
Procedure and provisions as to	29	344
Provision for acquisition of public utilities apply	29	344
Public Improvement Act, superseding of	29 n.	346
JANITORS AND ENGINEERS.		
Supplies for	1 n.	55
JAPANESE INTERPRETERS FOR POLICE COURTS.		
Power to appoint	35 n.	349
JUDGES.		
Of the Superior Court may appoint interpreters	1	108
JURORS' FEES.		
Construction of statutes	1 n.	108
Payment of, in criminal cases	1	108
JUSTICE OF THE PEACE.		
Election of	1	299
Is not a county officer	1	119
May be teacher in evening school	4	336
Salary of	1	118
Term of; power to fix	1	119
JUSTICES' COURTS.		
Chapter on	1	118
Chief clerk of; term; salary	1	118
Deputies of chief clerk; salary	1	118
Nature of	1	119
Presiding justice; salary of	1	118
LAW LIBRARY. See San Francisco Law Library.		
LEASES.		
Of lands of the city	32	44
LEGAL DEPARTMENT.		
Article on		108-129
LEGISLATIVE DEPARTMENT. See Supervisors.		
LEGISLATIVE POWER.		
How vested	1	13
Mayor is not part of legislative department	1 n.	13
LESSEE.		
As owner	19	199
May deduct payment of assessment from rent	20	199

	Sec. or Subd.	Page
LIBRARY FUND.		
Consists of what	2	70
Levy of tax for benefit of	2	248
Payments from; how to be made	5	250
Surplus moneys in	16	69
LIBRARY SITE.		
Bonds for; how to be voted upon	29 n.	346
LICENSE TAXES.		
Exemption from	15 n.	38
For sale of imported goods in unbroken packages	15 n.	38
May be imposed on street cars	15 n.	38
Power to collect is a "municipal affair"	15 n.	39
LICENSES.		
Are in charge of Tax Collector	4	104
Monthly statement of, to be made by Tax Collector	5	105
Must be signed by Auditor	5	105
LIEN.		
Of assessment for street work	12 n.	186
Of warrant and assessment for two years	12	183
Of warrant, assessment, and diagram	12	185
LIFE DIPLOMAS. See BOARD OF EDUCATION.		
LIGHT.		
Contracts for lighting; term, rate, demands	6 n.	61
Furnishing of	13	36
Rates of	14	37
LIQUIDATION.		
Sinking Fund to liquidate surrendered bonds	7	73
LIQUOR LICENSE LAWS.		
Validity of	3 n.	255
LOTTERY TICKETS.		
Power to prohibit possession of	1 n.	30
MAP OR PLAT.		
Of district to be affected by opening etc. of streets	2	212
Of land to be taken for opening etc. of street	7	216
Of new streets and subdivisions, filing of	28	206
Owners must file, with Board of Public Works on the opening etc. of streets	9	217
MATERIALS.		
For street repairs, how to be obtained	31 n.	209
MAYOR.		
Amount of bond of	2	331
Appointees in office of; salaries and terms	1	84
As a municipal officer	1 n.	84
As ex officio president of Supervisors	5	86
Bond of, must be approved by Auditor	1	331

MAYOR (Continued).	Sec. or Subd.	Page
Bonds of employees of Board of Public Works to be approved by	4	132
Contingent fund for	35	45
Disapproval of; when final	16 n.	20
Duties of	2	84
Duties of, where additional clerks or employees are required	35	348
Duty of, as to contracts and agreements with city	3	85
Duty of, as to officers and vacancies not provided for in Charter	4	86
Duty of, as to surrender and redemption of bonds	7 n.	73
Duty of, to institute action or proceedings to annul forfeited franchises	3	86
Election of	1	299
Ex-Mayors entitled to seat in Board of Supervisors	2	13
Finance Committee must report to, when	4	47
First appointments by; terms of office	36	349
Is not part of Legislative Department	1 n.	13
Is presiding officer of Supervisors	5	14
Legislative authority of	5 n.	15
May require report at any time from Civil Service Commissioners		
May submit proposition for acquisition of public utilities	3	302
May veto items in budget	4	63
Must approve increase in rate of taxation	13	68
Must approve payment of money out of Urgent Necessity Fund	8	64
Must execute contracts in name of city	5	59
Ordinances fixing water rates need not be presented to	16	19
Passage of bills over veto of	16	19
Power of, to postpone action on franchise	3	86
Power of, to preserve public order	2	84
Power of, to suspend delinquent officers	2	84
Power to remove member of Police or Fire Departments for participation in politics	32	347
Power to remove officer for cause	18	340
Power to suspend from office	18	340
Powers of, in general; recommendations	2	84
Presentment of resolution of intention to	3 n.	160
President pro tempore of Board of Supervisors	6	87
Procedure after suspension of elected officer by	19	341
Qualifications; term; salary	1	84
Removal of appointed officer by	20	341

Sec. or Subd. Page
MAYOR (Continued).
  Shall designate president of Board of Public Works. 2 131
  Shall sign final estimate for budget................ 4 63
  Submission of bills to........................... 16 19
  To appoint Board of Public Works................. 1 131
  To appoint four Police Commissioners............. 1 253
  To appoint five Election Commissioners............ 1 296
  To appoint five members of Board of Health....... 1 290
  To appoint five Park Commissioners................ 5 325
  To appoint in case of suspension from office........ 18 340
  To appoint three Civil Service Commissioners...... 1 315
  To appoint, when, where member of Board of Public Works is interested in matter of opening of streets 19 223
  To audit and allow Auditor's demand for salary..... 13 80
  To notify Board of Supervisors of his act in removing an appointed officer......................... 20 341
  Vacancies in office of; how filled.................. 6 87
  Veto of separate items by.......................14 n. 18
MAYOR'S PROCLAMATION.
  Is required only in city elections..................4 n. 300
MEMORIAL DAY.
  Appropriation for, by Supervisors................. 18 40
MILEAGE.
  Charge for; violation of section; penalty........... 11 78
  No double allowance for......................... 11 79
  Payment of 11 78
MISCELLANEOUS PROVISIONS OF CHARTER.....1-38 335-352
MOB VIOLENCE.
  Liability of city for ....3 n. 255
MONEYS.
  All, to be paid to Treasurer; penalty............... 17 340
MONGOLIANS. See Schools.
MONTHLY EXPENDITURES.
  One-twelfth limit on............................ 9 64
MONTHLY REPORTS AND EXHIBITS.
  Monthly statements required concerning mileage... 11 79
  Of officers in general............................ 9 78
  Of Treasurer to Auditor.......................... 8 77
  Where extra assistants are employed............. 12 79
MONTHLY STATEMENT.
  Of licenses to be made by Tax Collector........... 5 105
MONUMENTS.
  Power of Park Commissioners as to................ 10 329
MORGUE.
  Coroner to have control and management of........ 1 106
  Supervisors to provide........................... 9 35

	Sec. or Subd.	Page
"MUNICIPAL AFFAIR."		
Appointment of city officers is	6 n.	337
Charter is paramount to general laws	1 n.	28
Management of hospitals and almshouses is	1 n.	290
Privilege for use of streets is	6 n.	51
School system of State is not	29 n.	346
Special privilege for use of streets is	6 n.	51
Statute defining public offenses is not	1 n.	31
Taxation for municipal purposes is	15 n.	39
Trial and punishment of State offense is not	2	121
What is		366
What is not		367
MUNICIPAL BONDED INDEBTEDNESS.		
For acquisition of public utilities	5	307
Same	7	309
For acquisition of public utilities; limit to	9	311
Serial bonds, in general	10	311
MUNICIPAL ELECTIONS.		
Chapter on	1-4	299-300
Mayor's proclamation	4	300
Officers elected under Charter; take office when	3	300
Officers to be elected; terms	1	299
Terms of office	1 n.	299
Terms of officers elected in 1898	2	300
When held	1	299
MUNICIPAL IMPROVEMENTS.		
Bonds for	29 n.	345
MUNICIPAL REVENUES AND BONDS.		
Supervisors shall fix amount of revenue	14	68
Supervisors to provide for payment of bonds	14	68
MUNICIPALITY. See CITY AND COUNTY OF SAN FRANCISCO.		
NEGLIGENCE.		
Liability of Board of Public Works for	16 n.	196
Liability of City and County for	5 n.	12
NEW CITY HALL COMMISSIONERS.		
Board of Public Works successors to	7	133
Board of Public Works to take papers of	8	134
NOTICE.		
Of street-work, form of	3	160
Of street-work, service and publication of	26	204
Of street-work to be posted along line of improvement	3	159
Of street-work to be posted and mailed	3	159
Proceedings to open etc. streets	3 n.	214
To be given by Board of Public Works; service of	22	200

Sec. or Subd. Page

NUISANCES.
- Abatement of, by Board of Health..................3 n. 291
- Supervisors to provide for abatement of........... 6 34

OFFICE.
- Becomes vacant when 10 338
- Becomes vacant upon official's conviction of felony.10 n. 338

OFFICE HOURS.
- Of Tax Collector 14 339
- Of Treasurer 14 339
- Of various officers 14 339

OFFICER.
- Appointments of, to be in writing, in duplicate...... 22 341
- Becoming interested in contract, as cause for forfeiture of office 6 337
- Bribing of, prohibited; penalty.................... 8 337
- Classification by lot to be recorded and filed........ 23 342
- Classification of officers 23 342
- Extra or temporary clerk is not "salaried officer"..4 n. 336
- First appointments by Mayor; terms of office....... 36 349
- Ineligibility of certain Commissioners to office..... .31 347
- Is prohibited from giving valuable consideration for what 7 337
- Is prohibited from making what promises.......... 7 337
- Liability of, for approving illegal demand........... 11 338
- Liability of, for illegal payments.................. 11 338
- Making of gift or promise by, as cause for forfeiture of office 7 337
- Mayor's duties as to, when not provided for in Charter 4 86
- No right to be absent from state; exception......... 3 335
- Not to be interested in contracts of city........... 6 336
- Not to be interested in property or supplies of city.. 6 336
- Power of, to administer oaths..................... 24 342
- Power of, to issue subpoenas and to hear testimony. 24 342
- Power of, to punish for contempt.................. 24 342
- Procedure after suspension of elected............. 19 341
- Removal of appointed, by the Mayor.............. 20 341
- Removal of, by Mayor........................... 18 340
- Removal of, by Supervisors...................... 18 340
- Shall not hold two salaried positions.............. 4 336
- Suspension of, by Mayor......................... 18 340
- Teacher in night school is not an.................4 n. 336
- To be classified when............................ 23 342
- To make monthly report and exhibit.............. 9 78
- Unauthorized absence from state is cause for removal of 3 335
- What, are authorized to punish for contempt......24 n. 343
- Who is disqualified from being an................. 15 339

Sec. or Subd. Page
OFFICIAL NEWSPAPER.
All publications to be made in 25 343
OFFICIAL RECEIPTS.
Receipts of other officers than Treasurer must state what 7 77
To be bound into books 5 76
Treasurer's receipt must state what 6 77
Treasurer to give, when 4 76
OFFICIAL SEALS.
Provision for 23 41
OFFICIALS. See Bonds of Officials.
ONE-TWELFTH LIMIT.
On monthly expenditures 9 64
OPENING ETC. AND CHANGING GRADE OF STREETS. See Streets; Grade and Change of Grade of Streets; and Improvement of Streets.
Application or petition, necessity of 2 n. 213
Appeal to Supreme Court 14 220
Assessment of benefits 8 n. 217
Assessment of benefits and damages 8 217
Authenticated valuation prima facie evidence 10 218
Benefits and damages, assessment of 8 217
Board of Public Works to make estimates of expenses 1 211
Chapter on 1-20 211-225
City Attorney to act as attorney for Board 14 221
Condemnation proceedings 12, 12 n. 218, 219
Confirmation of report and judgment 15 221
Court to adjudicate conflicting claims 18 223
Court to place Board in possession, in disputed cases 17 222
Deposit of amount of expenses 1 211
Determining value of lots to be taken 8 217
Disbursement of compensation in condemnation suits 16 222
Essentials of application or petition 2 213
Fixing of boundaries of district 1 n. 212
Grade and change of grade of streets; in general 20 n. 224
Grade and change of grade of streets; initiatory steps, how taken 20 n. 224
Grade and change of grade of streets; procedure, explanation of 20 n. 225
Hearing of objections by court 13 219
Interested members must not act 19 223
Judgment roll shall consist of what 14 220
Jurisdiction and judgment of court 13 219
Law governing 1 n. 212
Lien upon lands 13 219
Majority petition to open streets, etc 1 211

	Sec. or Subd.	Page
OPENING ETC. AND CHANGING GRADE OF STREETS (Continued).		
Map of district to be affected	2	212
Mayor to appoint where member is interested	19	223
Measure of damages	7	216
Meetings of Board to be public	9	217
Necessity of improving, what is conclusive of	1 n.	212
Objections may be filed, hearing	4	214
Objections, waiver	4 n.	215
Ordinance for improvement	6	215
Owners must file plats with Board	9	217
Petition for street-improvement	2	212
Procedure in determining values	11	218
Publication and notice of valuation and assessment.	12	218
Publication of resolution of intention	3	214
Same	7	216
Recommendation of street improvement	5	215
Redemption from sale, time and manner of	15	222
Report of Board to be filed with County Clerk	12	218
Resolution of intention for street improvements	2	212
Resolution of intention, transmission of	6	215
Signing of application or petition	2 n.	214
Sufficiency of objections	5	215
Supervisors may change grade	20	224
Survey of improvement	7	216
Tax Collector to collect assessment or sell lots	15	221
Valuation of lots taken	7	216
What notice shall be given	3	214
ORDINANCES.		
Accepting streets, publication of	13 n.	18
Adoption of, by vote of people, makes valid	20	22
Advertising of bills and resolutions; exception	13	17
Authorizing sparring exhibitions	1 n.	31
Bills and resolutions; final adoption	9	15
By petition, how amended or repealed	20	22
Charter to be followed in taking vote on final passage	9 n.	16
Compelling examination of steam-engine operators	1 n.	30
Deposit of all	17	20
Enactment and passage of	8	15
Final passage of bill	12	17
Fixing water rates need not be presented to Mayor for approval	16 n.	19
For acquisition of public utilities, publication of	8	310
Forbidding further burials in city, validity of	1 n.	30
General ordinance, what constitutes	1 n.	30

Sec. or Subd. Page

ORDINANCES (Continued).

- Granting franchise authorizing lease 7 51
- Granting franchise for street railways.............. 7 51
- Invalid ordinances; illustrations of.................1 n. 32
- Legislation must comply with what................8 n. 15
- Legislating against poker-playing 1 31
- Limiting height of fences used for advertising purposes ....1 n. 30
- Mayor's disapproval, when final ....16 n. 20
- Must comply with what section....................8 n. 15
- Passage of bills over Mayor's veto................ 16 19
- Penalty for violation of park ordinances............ 5 326
- Petition to submit to vote, requisites of............ 20 22
- Prohibiting possession of lottery tickets............1 n. 30
- Providing compensation for expert witnesses.......1 n. 30
- Publication of, requires what....................13 n. 18
- Purchase of land worth more than fifty thousand dollars by 21 23
- Reconsideration 12 17
- Renewal of franchise 12 17
- Repeal of 18 20
- Respecting acquisition of public utilities........... 5-8 307-310
- Respecting street improvements, what repealed..... 27 344
- Revision and amendment of 10 16
- Subject and title of 11 16
- Submission of bills to the Mayor.................. 16 19
- Take effect when 15 19
- Title of 11 16
- To acquire public utilities 5-7 307-310
- Valid ordinances; illustrations of ....1 n. 31, 32
- Validity of, adoption at election.................... 21 23
- Vote necessary to amend pending bill.............9 n. 16
- What, continued in force 28 344
- What must be voted upon, tickets in election........ 21 23

OUTSTANDING BONDS.

- Bids for surrender of 7 73
- Redemption of 7 73

OVERHEAD WIRES.

- Not forbidden ....27 n. 43

OVERTIME.

- Pay for, not to be allowed........................ 33 348

OWNERS.

- Owners may do grading in front of their lots, proceedings 8 179

PARAMOUNT LAW.

- As to stenographers' fees 2 109
- Charter as 367

Sec. or Subd. Page

PARK COMMISSIONERS.
  Appointees of; funds 6 326
  Appropriations for parks etc. to be expended by 6 327
  Balance in Park Fund goes where 8 329
  Contracts to be approved by 4 326
  Disposition of donations, legacies, and bequests 8 328
  Donations, legacies, and bequests 8 328
  Duties of, and meetings 4 325
  Expositions in parks; conditions 6 326
  Fair or exposition may be permitted when 6 327
  Five; to be appointed by Mayor 3 325
  Lease of any part of parks; restrictions upon 6 327
  May accept donations for Museum and Art gallery.. 6 327
  Museum and Art gallery under control of 6 327
  Ordinances for park government to be adopted by .. 5 326
  Organization of 4 325
  Park funds; disbursement of 6 327
  Park Police 7 328
  Particular parks, designation of 1 324
  Penalty for violation of park ordinances 5 326
  Places of detention for persons arrested 7 328
  Power of, as to erection of public monuments 10 330
  Power of, to contract for supplies .... 6 n. 328
  Power of, to lease plot for State Exposition buildings 9 329
  Powers of, as to leases 6 326
  President, secretary, rules 4 325
  Procedure required of 4 326
  Provisions of article, how governed 4 326
  Public parks, plazas, etc., in general 1 324
  Taxes for public purposes; limits of 11 330
  Term of office of 3 325
  To approve works of art 10 329
  To have exclusive control of parks 1 324
  To have exclusive management of parks 6 328
  To have full control of parks and squares 6 326
  To pass upon public structures 10 329
  To serve without compensation 3 325
  To succeed whom 2 325
  What contracts to be open to public competition.... 4 326
  Work of art, design, acceptance, location of 10 330
PARK FUND.
  Consists of what 2 70
  Sources of, and purpose of 2 69
  Surplus moneys in 16 69
PARK POLICE.
  As part of city government .... 1 n. 265

	Sec. or Subd.	Page
PARK POLICE (Continued).		
Detail of	7	328
Members of, not entitled to credits for service as member regular force	1 n.	265
PARKS AND BOULEVARDS. See PARK COMMISSIONERS; PARK FUND; and PARK POLICE.		
Acquisition of land for purposes of	29 n.	346
Description of city property to be acquired for, by purchase	10 n.	140
PASSENGER VEHICLES.		
Supervisors to regulate use of	7	35
PAWN SHOPS.		
Power of Chief of Police over	7	258
PAYMENT OF CLAIMS.		
Against city	1 n.	82
Certain claims may be revived	1	82
Chapter on	1	82
For mileage	11	79
For service outside of office duties	1 n.	75
For services of extra assistants employed	12	79
Liability for; when illegal	11	338
Limitations upon demands	1	82
Restrictions as to; application of	3 n.	114
Subsequent valid demands, revival of	1	82
Unpaid demands	6	73
When permissive in its nature	1 n.	83
PAYMENT OF JURORS' FEES.		
In criminal cases	1	108
PEDDLERS.		
Power of Chief of Police over	7	258
PENALTY.		
For failure to enforce article on acquisition of public utilities	13	314
For failure to render account and to make settlement	14	81
Forfeiture of office for being interested in contracts	6	336
Incurred by officer for making promises or giving valuable consideration	7	337
On taxes, power of Supervisors to remit	1 n.	29
Power of Supervisors to prescribe	16	40
PENSIONS. See FIREMEN'S RELIEF FUND; FIRE PENSION FUND COMMISSIONERS; POLICE RELIEF AND PENSION FUND; and POLICE RELIEF AND PENSION FUND COMMISSIONERS.		
Annual, allowed when	3	267
Estimate of annual	7	269
Same	7	285

	Sec. or Subd.	Page
PENSIONS. (Continued).		
Forfeiture of	5	268
Same	6	285
List of; how to be certified and signed	8	286
Member of Police Department may be retired upon, when	2	266
Monthly, allowed when	2	266
Monthly pension to widow	4	267
Same	1	284
Object of Charter-framers in making pension of firemen depend upon rank	4 n.	283
Of members of Fire Department, amount of	4 n.	284
Power to grant	3 n.	267
Provision for family of member killed	5	284
Requisites of certificate required for annual	3	267
Rules and regulations as to	7	285
Sources of revenue for	11	270
To orphan children	2	268
Same	2	284
To parents	3	268
Same	3	285
Vested right in payment of, not disturbed by Charter	10 n.	270
What disability of firemen justifies pension	4 n.	284
PERMITS.		
For pawnbrokers, peddlers, etc.	7	258
Power of Board of Public Works to grant	1 n.	136
Power of Supervisors to grant	1 n.	136
"Sign" is not a "structure"	1 n.	136
To electric light companies to use streets	1 n.	136
PERMITS FOR SALE OF LIQUOR.		
Granted by Board of Police Commissioners	3	255
PETITION OF REMONSTRANCE.		
In general	4 n.	167
PHYSICIANS.		
Exemption of, from Civil Service provisions	11	320
PLACES FOR DETENTION.		
Supervisors to provide for	10	35
POKER PLAYING.		
Power to legislate against	1 n.	31
POLICE COMMISSIONERS. See BOARD OF POLICE COMMISSIONERS.		
POLICE CONTINGENT FUND.		
Transfer of balance in	37	350
POLICE COURT CLERKS.		
Appointment of, by County Clerk; salaries	2	116

Sec. or Subd. Page

POLICE COURT INTERPRETERS.
  Approval of demands of, by Supervisors ....19 n. 21
POLICE COURTS. See POLICE JUDGES.
  Assistants of Warrant and Bond Clerk 5 125
  Attorneys, qualifications to appear in 16 129
  Bail and appeal bonds 5 125
  Bail and appeal bonds limit, cash bail............. 5 125
  Bailiffs of 14 128
  Bail-moneys not to be withdrawn without Auditor's approval on order of court ....2 n. 93
  Bondsmen, eligibility 7 124
  Cannot appoint extra stenographers to be paid out of municipal treasury 11 127
  Cannot try prosecution for criminal libel ....2 n. 121
  Chapter on 1-17 119-129
  Chief of Police to furnish daily calendar of arrests.. 13 128
  Clerk of; duties 10 127
  County Clerk to act as clerk of ....
  District Attorney must attend 4 124
  Duty of Warrant and Bond Clerk to draw complaint.4 n. 125
  Effect of vesting, with "exclusive jurisdiction" ....2 n. 122
  Establishment of ....1 n. 299
  Fixing bail 6 126
  Form of return on bonds 5 125
  Judges of; term, salary, qualifications 1 120
  Jurisdiction of 2 120
  Justice of the Peace may act as judge of 12 128
  May accept bail 8 126
  Office of Warrant and Bond Clerk to be always open. 7 126
  Police Department 1 120
  Police Judges are magistrates ....2 n. 121
  Power of Police Judges as to preliminary examinations ....2 n. 121
  Power of, to appoint Japanese interpreters for.....35 n. 349
  Power of, to fix compensation of attaches .... 11 n. 127
  Presiding judge of 1 120
  Proceedings in; how conducted 3 122
  Rules to be adopted by Police Judges 15 129
  Service of papers 9 126
  Sessions of 1 120
  Shall have four judges 1 120
  Statements required in calendar of arrests to be furnished daily by Chief of Police 13 128
  Stenographer is an attache of the court 11 128
  Stenographers of, duties, salary of 11 127
  Term of Police Judges elected in 1898 .... 17 129

	Sec. or Subd.	Page
POLICE COURTS (Continued).		
Warrant and Bond Clerk; qualifications and duties ..	5	125
Warrant and Bond Clerk, salary of................	5	125
POLICE DEPARTMENT. See BOARD OF POLICE COMMISSIONERS; PARK COMMISSIONERS; PROPERTY CLERK OF POLICE DEPARTMENT; SPECIAL POLICE OFFICERS; and SUBORDINATE OFFICERS OF POLICE DEPARTMENT.		
Article on		252-273
Chief of Police, chief executive officer of	3	257
Chief of Police must detail officer for detective work in City Attorney's office	5	111
Civil Service provisions as to	11	319
Consists of what	1	252
Control of Chief of Police	1	256
Fair trial before dismissal or punishment	3	262
Leases to, should stand in name of city	1 n.	28
Members of, not to participate in politics...........	32	347
Members of; qualifications	3	252
Members of; terms	2	252
Officers, severance of connections with; effect of.....	1 n.	261
Organization of	1-4	252-254
Promotions, rules as to	1 n.	261
Promotions, suspension, dismissals, and disratements	1-3	261-263
Right of, to grant permits for sale of liquor	3	255
Subordinate officers of	1	259
To have sole control over its own system and wires..	4	288
Unclaimed and stolen property	1-5	263-265
Violations of rules of; penalties	2	262
POLICE FORCE.		
Appointment, present and future	1	265
Examination, when necessary	1 n.	265
How constituted	1	265
May reward, for heroic conduct	8	269
Members of Park Police, credits	1 n.	265
Policemen on special detail, retention from monthly salary of, for benefit of Police Relief and Pension Fund	12	272
Protection of Civil Service article	1 n.	265
Retention from monthly salary of, for benefit of Police Relief and Pension Fund	6 n.	269
Same	12	272
Shall make estimate of annual pensions	7	269
Shall make rules and regulations concerning Police Relief and Pension Fund	7	269

Sec. or Subd. Page
POLICE JUDGES. See POLICE COURTS.
Election of four 1 299
Jurisdiction of, to conduct preliminary examinations.2 n. 122
POLICE MATRONS.
Appointment of, by Board of Police Commissioners.. 6 256
POLICE OFFICERS.
Cannot be removed by Commissioners without written charges ....3 n. 262
Duty of, as to property of prisoners 2 261
May be removed without charges when ....3 n. 262
Number of; salary 1 261
Power of, to accept rewards 2 254
Severance of connection with department, effect of..1 n. 261
To be ex officio Health Officers.................... 3 261
POLICE PENSION FUND COMMISSIONERS. See SECRETARY OF POLICE PENSION FUND COMMISSIONERS, and POLICE RELIEF AND PENSION FUND.
Power of, to grant pensions 3 267
Powers of Board; secretary; Pension Fund.......... 10 270
POLICE RELIEF AND PENSION FUND. See POLICE PENSION FUND COMMISSIONERS.
Aged and infirm, retirement 2 266
Auditor's report on surplus; deficiency 3 272
Chapter on 1-13 266-272
Commissioners to hold quarterly meetings 9 269
Construction of statutes ....1 n. 266
Death after ten years' service 6 268
Deposit by policemen on special detail 12 272
Estimate of annual pensions 7 269
Forfeiture of pensions 5 268
Member may be retired on pension when 2-3 266-267
Money of state, not a contribution to ....11 n. 272
Monthly pension, amount of 2 266
Payments from 9 269
Pensions to families allowed when, and how........ 4-5 267-268
Physical disabilities, annual pension 3 267
Police Commissioners to be trustees of 1 266
Power to grant pension ....3 n. 267
Provision for deficiency in ....13 n. 272
Provision for family of member killed in service.... 4 267
Qualifications of pensioners 2 266
Requisites of warrants for payment from fund 9 269
Rewards for heroic conduct 8 269
Rules and regulations 7 269
Sources of revenue 11 270

Sec. or Subd. Page

POLICE RELIEF AND PENSION FUND (Continued).
  Surplus moneys in 16 69
  Surplus of, how applied, annually.................... 13 272
  Treasurer to retain $2.00 monthly for 9 271
  Trustees of 1 266
  Vested right in Pension Fund not disturbed by Charter ....1 n. 270
  Warrant; presentment, auditing, payment 9 270
  What moneys shall be paid into 11 270
  Widow is entitled to what amount ....6 n. 269
POLICE SURGEONS.
  Appointment of, by Board of Police Commissioners.. 7 256
POLITICAL ASSESSMENTS.
  On members of Police or Fire Departments prohibited 32 347
POLL-TAXES.
  Assessor has no right to percentage ....2 n. 101
POUND FEE FUND.
  Transfer of balance in 37 350
POWER COMPANIES.
  Rights of, in streets in laying conduits ....9 n. 139
POWER OF BOARDS.
  To issue subpoenas and to hear testimony 24 342
PRECEDENT OBLIGATIONS.
  Liability of City and County for ....4 n. 11
PRECINCT REGISTRATION.
  Board of Election Commissioners to provide for .. 5 298
PRELIMINARY EXAMINATIONS.
  Jurisdiction of Police Judges to conduct ....2 n. 121-122
PRISONERS.
  Duty of police officers as to 2 261
PRISONS.
  Supervisors to establish 11 36
PROMOTIONS, SUSPENSIONS, DISMISSALS, AND DISRATEMENTS.
  Chapter on 1-3 261-263
  Civil Service appointees, promotion of 1 261
PROPERTY CLERK OF POLICE DEPARTMENT.
  Amount of bond of 2 332
  Duty of, as to unclaimed and stolen property.................... 5 265
  To keep property of prisoners 2 261
PROPOSALS.
  For public work 14-16 142-144
PROTEST.
  Bar of proceedings ....4 n. 167
  Continuance or discontinuance of work ....4 n. 167
  Matters relating to ....4 n. 165

Sec. or Subd. Page

PROTEST (Continued).
  Question of continuance or discontinuance of work, what determines ... 4 n. 167
  Suspension or loss of jurisdiction ... 4 n. 166
  Work done after loss of jurisdiction ... 4 n. 167
  Written objections, in general ... 4 n. 166

PUBLIC ADMINISTRATOR.
  Amount of bond of ... 2 332
  Chapter on ... 1 115
  Election of ... 1 299
  Is a county officer ... 1 115
  Is entitled to what fees ... 1 115
  Office hours of ... 1 115
  Payment and duties of ... 1 115

PUBLIC BUILDING FUND.
  Proceeds of what boards go into treasury to credit of 29 344

PUBLIC BUILDINGS.
  Control of cleaning of, by Board of Public Works .. 4 137
  Control of construction of, by Board of Public Works 6 137
  Partial payments on contracts for ... 21 n. 153
  Separate contracts for subdivisions of ... 21 n. 153

PUBLIC HEALTH. See Board of Health.

PUBLIC IMPROVEMENT ACT.
  Superseding of, by Charter ... 29 n. 346

PUBLIC LIBRARY AND READING ROOMS.
  Acquisition of real property for library site ... 7 n. 271
  Authority to use real estate for library purposes.... 7 251
  Board of Trustees, meetings, quorum ... 5 249
  Board of Trustees, powers of ... 5 249
  Board of twelve Trustees, how constituted ... 1 248
  Chapter on ... 1-7 248-251
  Gifts and bequests to Library Fund ... 3 249
  Librarian and Secretary ... 5 249
  Library Fund, amount of tax ... 2 248
  Monthly meetings of Board of Trustees ... 5 249
  Power of Board to administer trusts ... 2 250
  Power of Board to appoint and remove assistants .. 3 250
  Power of Board to equip buildings ... 6 250
  Power of Board to establish branches ... 7 251
  Power of Board to fix salaries ... 6 250
  Power of Board to make rules and regulations 1 250
  Power of Board to order payments on Library Fund 5 250
  Power of Board to purchase books ... 4 250
  Power to control all library property ... 5 249
  Powers of Board in general ... 6 250
  President of Board of Trustees ... 5 249
  Title to property to vest in City and County ... 4 249

Sec. or Subd. Page
PUBLIC MONEYS.
Supervisors shall authorize disbursement of 15 69
PUBLIC POUND.
Supervisors to provide 8 35
PUBLIC SCHOOL PURPOSES.
City may bond itself for ....29 n. 346
PUBLIC SCHOOLS AND LIBRARIES.
Chapter on 1 230
PUBLIC WORKS. See BOARD OF PUBLIC WORKS.
PUBLICATION.
And service of notices for street improvements 26 204
Conflict between sections ....13 n. 18
Of award of contract not to be made unless expressly authorized ....1 n. 56
Of bills and resolutions, exception 13 17
Of lists of properties to be sold for delinquent taxes. 25 n. 343
Of ordinances accepting streets not required ......13 n. 18
Of ordinances requires what ....13 n. 18
Of resolution of intention as to street work.......3, 3 n. 159, 160
Of resolution of intention to open etc. streets 3 214
Same 7 216
Of resolutions calling for money from Urgent Necessity Fund ....19 n. 22
To be made in official newspaper 25 343
What only need be published ....19 n. 22
PURCHASE.
Definition of 21 24
QUARANTINE.
Removal of, by State Board of Health ....3 n. 292
RAILWAYS.
Conditions of entry of railways into city ....28 n. 43
Entry of, into city 28 43
RECORDER.
Amount of bond of 2 331
Appointees of; salary 1 106
Appointment by, without reference to Civil Service rules ....11 n. 320
Chapter on 1-2 106-107
Civil Service provisions as to 11 319
Copyists, compensation 1 106
Duties of 2 107
Election of 1 299
Is a county officer ....1 n. 107
Is custodian of public records 2 107
Office hours of ....1 n. 107

Sec. or Subd. Page

RECORDER (Continued).
  Public records are "written" if typewritten ....2 n. 107
  Qualifications, term, salary 1 106
  Right to copy deed by photographing it ....2 n. 107
RECORDING OF CHARTER 365
REDEMPTION OF BONDS.
  Duty of Treasurer as to ....1 n. 92
  Outstanding 7 73
REGISTER OF WARRANTS.
  Auditor must keep, showing order of demands 8 91
REGISTRAR OF VOTERS. See BOARD OF ELECTION COMMISSIONERS.
  Duty of, to give place on ballot ....3 n. 298
  Exemption of, from Civil Service provisions 11 320
  Not to take part in politics 2 297
  Shall be appointed by Board of Election Commissioners 3 297
  Shall be Secretary of Board of Election Commissioners 3 297
  Term of 3 297
REGISTRAR'S OFFICE.
  Power of Supervisors to appoint deputies in........6 n. 28
REGISTRATION.
  Demands are payable in order of 6 95
  Effect of, as to funds and payment ....3 n. 114
  Of demands and agreements 9 64
  Of demands, effect of 6 96
  Of unpaid demands 6 95
  Warrant, assessment and diagram must be recorded.12 n. 185
REMOVAL FROM OFFICE.
  By Mayor for cause 18 340
  By Supervisors for cause 18 340
  Delay to deposit moneys with Treasurer as ground for 17 340
  For being absent from state 3 335
  Is a "municipal affair" ....6 n. 337
  Mayor's power to remove all members of Board who have failed or refused to do their duty 32 348
  Of appointed deputies or employees 21 341
  Of Election Commissioners ....18 n. 340
  Participation of member of Fire Department in politics as cause for 32 347
  Participation of member of Police Department in politics as cause for 32 347
  Removal of appointed officer by Mayor 20 341
  Suspension by Mayor 18 340

Sec. or Subd. Page

REPAIRS.
  Accepted streets, city to keep in repair 23 200
  For streets, materials for; how to be obtained ....31 n. 209
  For street work on unaccepted streets; bids for 16 195
  On streets, owner of lands may be required to make 18 199
  On unaccepted streets, certificate of Board of Public Works upon completion of 16 195
  On unaccepted streets, contractor may sue for amount due upon 17 198
  On unaccepted streets, liability of owners for amount of 16 195
  On unaccepted streets, what board to issue permits.16 n. 198
  Owners may be compelled to make, when...........16 n. 197
  To streets may be done by Board of Public Works when 16 195
  To streets not yet accepted must be done by owners 16 195
  What, are provided for ....16 n. 197
RESOLUTION OF INTENTION.
  Estimate and assessment upon completion of contract 11 182
  Excepting work already done ....3 n. 160
  For street work; requisites of 3 159
  For street work, what may be included in 10 181
  In general ....3 n. 160
  Notice of 3 161
  Presentment of, to Mayor; necessity of ....3 n. 160
  Publication of ....3 n. 160
  Publication of award of contract for constructing sewer ....8 n. 227
  To construct sewers, etc. ....8 n. 227
  To lay granite curbs ....10 n. 181
  To open streets, etc. 2 212
  To open etc. streets; publication of 3 214
  To pave streets 10 181
  Transmission of, to Clerk of Board of Supervisors... 6 215
  What work may be included in ....3 n. 160
  When not sufficient ....3 n. 162
  When sufficient ....3 n. 161
RESOLUTIONS.
  Awarding contracts need not be published 1 56
  Of award of contract; sufficiency of ....1 n. 56
  Respecting street improvements, what repealed..... 27 344
RETURN.
  Of forfeited bail-moneys ....1 n. 75
  Of money paid as fees to county officer ....1 n. 75

	Sec. or Subd.	Page
REVENUE AND INCOME.		
Apportionment of	12	67
Of each year shall meet each year's expenses	9 n.	65-66
Same	11 n.	67
REWARDS.		
Right of Police Officers to accept	2 n.	254
Power of Supervisors to offer	21	41
SALARIED OFFICERS.		
Not entitled to fees	2	75
SALARIES. See appropriate and specific heads.		
Allowance of, fixed by law	13	79
Of officers and members of Fire Department	1	286
Provided for shall be in full compensation	34	348
SALE.		
Of useless property	33	45
SAN FRANCISCO LAW LIBRARY.		
Act of, continued in force	1	129
Provision for maintenance of	1	129
SCHEDULE		353-354
SCHOOL DIRECTORS.		
Amount of bond of	2	332
SCHOOL DISTRICT.		
May take by will	6	235
SCHOOL FUNDS.		
Cannot be diverted by Board of Education	9 n.	237
Teacher is entitled to salary when	9 n.	238
SCHOOL HOUSES.		
Are included in "improvement"	29 n.	345
SCHOOL HOUSES AND LOTS.		
Board of Public Works to construct school houses	1	246
Chapter on	1	246
Completion of school houses	1	246
Plans and estimates	1	246
Purchase of school houses	3	247
Remedies against	1 n.	246
Repair of school buildings by Board of Public Works	2	247
Repairs, Board of Education to call for plans and estimates	2	247
Repairs, Board of Public Works to direct and superintend	2 n.	247
SCHOOL TAX LEVY.		
Amount to be levied for Common School Fund	2	245
Annual estimates of	1	244
Chapter on	1-3	244-245
Extraordinary expenditures may be incurred when, and how	3	245

Sec. or Subd. Page

SCHOOL TAX LEVY (Continued).
  In general .... 2 n. 245
  Limit of aggregate amount of 1 244
SCHOOLS.
  Chapter on 1-2 231-232
  City may bond itself for public school purposes.... 29 n. 346
  Kindergarten system .... 1 n. 231
  Night schools 2 232
  Right to attend .... 2 n. 232
  School Department comprises what 1 231
SEALED PROPOSALS.
  For public work, invitation for .... 15 n. 143
SECRETARY OF BOARD OF FIRE PENSION COMMISSIONERS.
  Appointment of; salary 9 286
SECRETARY OF BOARD OF POLICE PENSION FUND COMMISSIONERS.
  Appointment of; salary 10 270
SECRETARY OF BOARD OF PUBLIC WORKS.
  Duties of, as to delivery of any article from corporation store-yard 32 210
  Duties of, as to objections of property owners 4 163
  Duty of, as to cleaning and sprinkling streets 29 207
  Duty of, as to objections where improvement is made chargeable upon a district 5 168
  Duty of, as to posting notices of street work 3 159
  Exemption of, from Civil Service provisions.......... 11 320
  No power to administer oaths 24 343
  Shall certify to correctness of district diagram 5 168
  To cause resolution of intention to open etc. to be published 7 216
  To receive deposit for opening streets, etc. 1 211
  Written objections of owners must be delivered to.. 4 162
SECRETARY OF FIRE COMMISSIONERS.
  Appointment; salary 4 274
SENATE CONSTITUTIONAL AMENDMENT NO. 2.
  Was carried at election 365
SERIAL BONDS.
  For acquisition of public utilities 10 311
  Signatures, coupons 11 313
SERVICE OF NOTICE, ETC.
  And publication of notices for street work 26 204
  Of notices to be given by Board of Public Works .. 22 200
SERVICE OF PROCESS.
  By police officer on request 24 342
  In Police Court matters 9 126

Sec. or Subd. Page

SERVICES.
  Outside of official duties; pay for ....1 n. 75
SEWERS AND DRAINAGE.
  Agreements as to damages to be paid owner 7 227
  Chapter on 1-9 225-227
  Condemnation of private property for 9 227-228
  Condemnation of property for purpose of; proceedings 9 227
  Construction and repair of sewers, etc. 2 226
  Control of, by Board of Public Works 7 137
  Control of sewers, etc. 2 226
  General drainage system 1 225
  Governing law, Vrooman Act ....1 n. 226
  Permits to make connections 4 226
  Power of Board of Public Works as to 2 226
  Publication of award of contract for constructing sewer ....8 n. 227
  Purchase of property for 6 227
  Recommendations by Board of Public Works 5 226
  Resolution of intention to construct sewer ....8 n. 227
  Rules and regulations as to; ordinances 3 226
  Law regulating subject of ....1 n. 225
  Liability of city for damage from sewers ....1 n. 225
  Sewers are included in "improvement" ....29 n. 345
  To be in charge of Board of Public Works 1 225
SHERIFF. See UNDER SHERIFF.
  Amount of bond of 2 331
  Appointees of; salaries 2 117
  Attorney for; salary 2 117
  Cases in which elisors may act ....1 n. 117
  Chapter on 1-3 117-118
  Civil Service provisions as to 11 319
  Election of 1 299
  Execution of process by successor ....1 n. 117
  Is a county officer ....1 n. 117
  May designate services to be performed by deputies 3 118
  Power to dispossess tenant ....1 n. 117
  Powers and duties of 1 117
  Term; salary of 1 117
SIDEWALKS.
  As part of street ....16 n. 198
  Same ....26 n. 205
SINKING FUND.
  Application of, as to surrendered bonds ....7 n. 73
  Surplus money in 16 69
  To liquidate delinquent bonds 7 73
SPARRING EXHIBITIONS.
  Power to authorize ....1 n. 31

Sec. or Subd. Page

SPECIAL DEPOSIT FUND.
  Annual tax for 12 313
  Consists of what 4 72
  Moneys in, are subject to what provisions 6 90
  Moneys in, how paid out 4 72
  Treasurer is special custodian of ....2 n. 93
  Treasurer to hold and keep moneys of ....2 n. 93
SPECIAL FEE FUND.
  Transfer of balance in 37 350
SPECIAL MEETINGS.
  Of Board of Police Commissioners 2 256
SPECIAL POLICE OFFICERS.
  Appointment of, by Police Commissioners 4 255
SPECIFICATIONS. See CONTRACTS FOR PUBLIC WORK.
SPRINKLING AND CLEANING STREETS.
  Appliances for ....13 n. 36
  Rates for 13 36
STATE.
  Transportation of moneys to treasury of, is proper charge against state ....2 n. 93
STATE BOARD OF HEALTH.
  No law authorizing, to remove quarantine...........3 n. 292
  Superseding of ....1 n. 290
STATE HOSPITAL.
  Liability of City and County for claims of..........5 n. 12
STEAM ENGINE OPERATORS.
  Power to compel examination of ....1 n. 30
STENOGRAPHERS.
  Additional stenographers cannot be appointed by Police Judge and paid out of municipal treasury ..11 n. 127
  As attaches of Police Court ....11 n. 128
  Crime for judge to receive stenographers' fees......11 n. 127
  Duties of stenographers in writing out testimony... 11 127
  Fees of; paramount law 2 109
  For Police Judges; duties; salary 11 127
  In criminal cases, compensation 2 109
ST. MARY'S PARK FUND.
  Nature and protection of 37 351
  Protection of ....2 n. 71
STREET BOND ACT.
  Lien provided for in ....1 n. 212
STREET LIGHT FUND.
  Transfer of balance in 37 350
STREET RAILWAY COMPANIES. See BOARD OF SUPERVISORS.
  Duty and obligation of, in laying pipes and conduits in street ....9 n. 139

Sec. or Subd. Page

STREET RAILWAY COMPANIES (Continued).
  Expiration of franchise ... 7 51
  License taxes on street cars ... 15 n. 38
  May be required to pave or macadamize ... 24 201
  Power of Supervisors as to ... 3 33
  Power of Supervisors to grant franchise to ... 6 47
  Recovery of expenses from, to restore torn up streets ... 24 n. 202
  Regulations of ... 27 42
  Rights of, in streets in laying conduits ... 9 n. 139
STREET SWEEPINGS.
  Conveyance of, to public parks ... 4 34
STREETS. See Grade and Change of Grade of Streets; Opening etc. and Changing Grade of Streets; Superintendent of Streets.
  Abandonment of ... 27 n. 206
  Acceptance of ... 23 n. 201
  Accepted, city to keep in repair ... 23 200
  Adaptation of the Vrooman Act ... 9 n. 180
  Amount and character of work to be definite and certain ... 1 n. 156
  Application for improvements, action upon ... 2 156
  Application or petition preceding work upon ... 2 n. 159
  Approval of plats and filing thereof ... 28 206
  Assessment and warrant as prima facie evidence ... 22 n. 154
  Board of Public Works may recommend paving ... 24 201
  Body of street improvements ... 2 n. 174
  Certificate of completion of work as evidence ... 24 201
  Certificate of work done ... 9 179
  Cleaning and sprinkling, contracts for ... 29 n. 208
  Cleaning and sprinkling, control of, by Board of Public Works ... 3 137
  Cleaning and sprinkling, inviting proposals for ... 29 207
  Cleaning and sprinkling of; districts ... 29 207
  Cleaning and sprinkling, provisions applicable ... 29 207
  Cleaning and sprinkling, separate bids for each district ... 29 207
  Closing of ... 27 n. 206
  Closing of, procedure, ordinance ... 27 205
  Compelling owners to keep in repair ... 18 n. 199
  Compelling owners to make repairs to streets ... 16 n. 197
  Completion of work upon ... 6 169
  Same ... 24 201
  Constitutional amendment proposed as to ... 1 n. 155
  Same ... n., 365
  Contract for over five-hundred-dollars repairs ... 30 208
  Contractor may sue for amount due on repairs ... 17 198

Sec. or Subd. Page

STREETS (Continued).
- Contracts for materials required for repair of streets 31 209
- Control of, by Supervisors 2 33
- Corporation store-yard 32 209
- Credit to certain owners for work done 9 179
- Curbstones are property of city .... 32 n. 210
- Distinction between accepted and unaccepted .... 8 n. 174
- District assessment .... 5 n. 169
- Duty and obligation of street railway companies in.. 9 n. 139
- Duty of Board of Public Works to make repairs .. 30 209
- Establishing grade of .... 26 n. 204
- Estimate of work, whether required .... 2 n. 159
- Exaction of "maintenance" bond not authorized .. 1 n. 156
- Excavation of, how work may be done 9 138
- Expense of resetting corner cesspools and curbings. 8 n. 173
- Filing of protest, proof, hearing, etc. .... 4 n. 165
- Full width of, improvement for 25 202
- Grading contracts 9 179
- Improvement chargeable upon a district 5 167
- Law of, Vrooman Act .... 1 n. 155
- Laying pipes and conduits, restrictions upon .... 9 n. 139
- Lessee as owner 19 199
- Lessee may deduct assessment from rent 20 199
- Lighting of 3 137
- "Materials" and "supplies," distinction .... 32 n. 210
- Materials for street repairs, how to be obtained .. 31 n. 209
- Minimum width of 28 206
- New streets and subdivisions 28 206
- Notice of passage of ordinances of Supervisors 24 201
- Notice of street work, how to be posted 3 159
- Notice of street work to be posted and mailed 3 159
- Objections of property holders, sufficiency of .... 4 n. 165
- Objections of property owners to work on 4 162
- Objections to charging district with improvement, hearing, etc. 5 167
- Old paving materials, ownership of 32 209
- Open public streets etc., what are 1 155
- Ordering use of patent pavements 26 203
- Other work than grading 9 179
- "Owner" of property defined 19 199
- Owners' liability for amount of repairs to streets... 16 195
- Owners may grade in front of their lots........ 8-9 179
- Pay for work on unaccepted street .... 8 n. 173
- Permit to put street, out of repair, in repair........ 16 n. 197
- Petition of remonstrance 4 162
- Same .... 4 n. 167
- Powers of Supervisors as to........ 1 n. 155

Sec. or Subd. Page
STREETS (Continued).
  Same .... 2 n. 33
  Power of Supervisors to make improvements........ 1 n. 156
  Proceedings for proposed work notwithstanding objections 4 162
  Proceedings in improvement of 3 159
  Proceedings where owners do work.................... 9 179
  Proposals for paving 24 201
  Proposed constitutional amendment concerning..... 1 n. 155
  Same .... n., 365
  Protest is insufficient when .... 4 n. 165
  Protest or written objection; in general............ 4 n. 166-167
  Provisions as to laying down pipes and conduits.... 9 n. 139
  Public streets, what are .... 26 n. 204
  Publication of notices for improvement of........... 3 159
  Purpose of Charter as to character of work.......... 1 n. 156
  Recovery of expenses for work on, from street railway companies .... 24 n. 202
  Register of accepted streets 23 200
  Rejection of bids; coupling propositions............ 1 n. 156
  Repairs on streets not accepted.................... 16-17 195-198
  Repairs to, not yet accepted must be done by owners. 16 195
  Resolution of intention; in general.................... 3 160
  Sidewalk as part of .... 16 n. 198
  Same .... 26 n. 205
  Storekeeper for corporation store-yard; duties, liabilities 32 209
  Street improvement resolution 3 159
  Tearing up of, rights of corporations.................... 9 n. 139-140
  Urgent repairs on 30 208
  What repairs are provided for .... 16 n. 197
  Work on unaccepted, pay for .... 8 n. 173
  Work to complete unimproved portion of 8 178
  Written objections, effect of 4 162
  Written objections, procedure after filing of......... 4 162
STRUCTURE.
  Sign is not .... 1 n. 136
SUBORDINATE OFFICERS OF POLICE DEPARTMENT.
  Captain of Detectives; salary and duties............ 6 260
  Captain; salary and duties 1-2 259
  Chapter on 1-6 159-260
  Corporals; salary and duties 1, 5 259
  Detective Sergeants, who are 6 260
  Detective, detail of, for duty 6 259
  In general; duties and salaries.................... 1, 6 259, 260
  Lieutenant; salary and duties.................... 1, 3 259

	Sec. or Subd.	Page
SUBORDINATE OFFICERS OF POLICE DEPARTMENT (Continued).		
Sergeants; salary and duties	1, 4	259
Same	6	260
SUBORDINATES.		
Duties of	30	346
List of number	5	336
SUBPOENA.		
Effect of disobeying	24 n.	343
Service of, by public officer	24	343
SUPERINTENDENT OF HIGHWAYS AND SQUARES.		
Board of Public Works successor to	7	133
Board of Public Works to take papers of	8	134
SUPERINTENDENT OF PUBLIC WORKS.		
Construction of sewers; procedure	4	163
SUPERINTENDENT OF SCHOOLS.		
Amount of bond of	2	332
Annual salary of	1	240
Appointment of additional deputies	2	241
Chapter on	1-4	240-244
Deputy of, as member of Board of Education	1 n.	241-243
Duties of; in general	1, 4	242, 244
Election of	1	299
Same	1 n.	240
Is member of Board of Education	1	240
Liability of, for warrants forged by his deputy	10	238
Must report annually to Board of Education	2	242
Office of, is distinct from Board of Education	1 n.	241
Power where employment of attorney by Board of Education was unauthorized	1 n.	241
Qualifications of deputies	4	241
Shall appoint four deputy superintendents	2	241
Term of deputies	3	241
To enforce rules	5	241
To inform Board of Education, and to recommend measures	3	242
To recommend studies and text-books	5	242
To report upon standing of schools	6	243
To visit and examine schools twice yearly	4	242
To visit schools	4	242
SUPERINTENDENT OF STREETS.		
Board of Public Works successor to	7	133
Board of Public Works to take papers of	8	134
Power to contract with bidder for public improvement	19 n.	147
Satisfaction of, as to street-work	22 n.	154

Sec. or Subd. Page
SUPERIOR COURT.
Stenographers in criminal departments, compensation 2 109
SUPERIOR COURT JUDGES.
Chapter on 1-2 108-109
May appoint court interpreters 1 108
SUPERVISORS. See Board of Supervisors; Clerk of Board of Supervisors.
SUPPLIES.
For Fire Department; contracts concerning......... 4 n. 278
Limit of 5 336
SURPLUS FUND.
Consists of what .... 3 n. 71
Goes where, at end of year........................ 3 n. 71
Moneys of Police Relief and Pension Fund to become part of, when 13 272
Payment of judgments out of .... 3 n. 72
Purposes of 3 71
Surplus moneys go to; exceptions 16 69
SURPLUS MONEYS.
Go to Surplus Fund; exceptions 16 69
SURVEY.
Of land to be taken for opening etc. of street........ 7 216
TAXATION.
Of property .... 2 n. 97-102
Source of power to raise money by............... 15 n. 38
TAX COLLECTOR.
Amount of bond of 2 331
Appointees of; salaries 1 102
Appointment of additional clerks or employees by, Civil Service 35 349
Chapter on 102-105
Civil Service provisions as to 11 319
Compensation of attorney to collect delinquent taxes. 3 104
Delinquent taxes, how to be credited when paid..... 2 n. 104
Duty and power of, as to licenses 4 104
Duty of, to receive valid taxes .... 2 n. 104
Election of 1 299
Eligibility of .... 1 n. 103
Extra clerks of; compensation 1 102
Extra clerks of; limited term .... 1 n. 103
Is a municipal officer 1 103
Licenses are in charge of 4 104
May appoint attorney to collect delinquent taxes.... 3 104
Must collect all licenses 2 103
Must make monthly statement of licenses 5 105
Must pay all taxes into treasury 2 103
Not entitled to any extra compensation .... 1 n. 103

Sec. or Subd. Page

TAX COLLECTOR (Continued).
  Office hours of .... 1 n. 103
  Same 14 339
  Power to make deeds 2 104
  Powers and duties of 2 103
  Publication of list of property to be sold for delinquent taxes .... 2 n. 104
  Qualifications; term; salary 1 102
  Special counsel is authorized when .... 3 n. 104
  To be charged with delinquent taxes 2 103
  To collect assessment on opening etc. of streets, or sell lots 15 221
  To compile certain list .... 2 n. 104

TAXES.
  Annual tax levy 5 63
  Auditor's annual estimate of city's requirements and revenues 2 62
  Delinquent, how to be credited when paid .... 2 n. 104
  Delinquent tax list as official advertising 2 57
  Estimates of annual requirements in each department 1 62
  For park purposes; limits of 11 330
  Levying of 1 62
  Same 16 69
  Limitation on power to levy .... 11 n. 67
  No payment of back claims out of delinquent .... 7 n. 74
  Power of Supervisors to refund when protested .... 1 n. 28
  Power of Supervisors to remit penalty on .... 1 n. 29
  Tax levy; when made; amount; dollar limit 11 66
  What tax-moneys are held for owner .... 2 n. 93

TEACHERS. See Board of Education.

TELEPHONE COMPANIES.
  Forfeiture of franchise .... 6 n. 51
  License taxes must be imposed upon .... 15 n. 38
  Power of Supervisors to establish rates .... 14 n. 37
  Supervisors have no power to grant franchises for .. 6 n. 50
  Rights of, in streets in laying conduits .... 9 n. 139-140

TEXT-BOOKS. See Board of Education.

THE SEVERAL FUNDS. IN GENERAL. See Common School Fund; General Fund; Interest Fund; Library Fund; Park Fund; Police Contingent Fund; Police Relief and Pension Fund; Pound Fee Fund; Sinking Fund; Special Deposit Fund; Special Fee Fund; St. Mary's Park Fund; Street Light Fund; Surplus Fund; Unapportioned Fee Fund; Urgent Necessity Fund.
  Balances in the several, to be transferred to their successive funds under the Charter 37 349

	Sec. or Subd.	Page
THE SEVERAL FUNDS. IN GENERAL (Continued).		
Balances of unnecessary	38	351
Chapter on	1-7	69-74
Continuance of funds	2	69
Expenditure of, for first six months under Charter	37	350
Funds to be carried forward	5	72
No division of separate funds	1	69
No payment of back claims out of delinquent taxes	7 n.	74
Payment of unpaid demands	6	73
Redemption of outstanding bonds	7	73
Restrictions as to funds and payment	3 n.	114
Transfer of balances in	37	350
TRADING-STAMP CLEARING-HOUSES.		
Prohibitory taxes	15 n.	38
TRADING STAMPS.		
Power to make issuance of, a misdemeanor	1 n.	32
TREASURER.		
Account and settlement with	14	81
All fees to be paid to	3	76
All moneys to be paid to	17	340
Appointees of; salaries	1	91
Cancelation of paid demands	6	95
Chapter on		91-96
Charge for transportation of moneys, state is liable for	2 n.	93
Coin bags for gold	3	94
Daily accounts	2	92
Daily delivery of fees to	4	76
Demands must specify items	5	95
Demands payable in order of registration	6	95
Duties of, where extra assistants are employed	12	79
Duty of, as to keeping funds separate	2	92
Duty of, as to redemption of bonds	1 n.	92
Duty of, as to surrender and redemption of bonds	7	73
Duty of, in settlement of accounts	10	78
Election of	1	299
Good defense to action on bond of	2 n.	92
Has control of public moneys	1	74
Holds what tax moneys for owner	2 n.	93
Is a municipal officer	1 n.	92
Is special custodian of Special Deposit Fund	2 n.	93
Joint custodian with Auditor	3	93
Joint custody book	3	94
Joint custody safe	3	93
Liability of, for safe keeping of Unapportioned Fee Fund	4	76
Liability of, on official bonds	5 n.	95

	Sec. or Subd.	Page
TREASURER (Continued).		
Money to be balanced daily	3	94
Monthly exhibit of, to Auditor	8	77
Monthly report of, to Auditor	8	77
Monthly statements	2	92
Municipal liability for funds deposited with	3 n.	94
Must personally attend office daily	2	92
Must receipt for fees	4	76
Office hours of	1 n.	92
Same	14	339
Original and duplicate receipts; statements thereon	4	94
Penalty for violation of section	2	92
Powers and duties	2	92
Qualifications; term; salary	1	91
Receipts of, must state what	6	77
Register of unpaid demands	6	95
Shall hold bail-moneys	2 n.	93
Shall make no payment without Auditor's approval	2 n.	93
Shall retain no fees of any kind	2	92
Supervisors must first approve demand before payment by	5 n.	95
To retain $2.00 monthly, for benefit of Police Relief and Pension Fund	9	271
Unauthorized demands not to be paid	5	95
TREASURY.		
Appropriations by Supervisors, and warrants by Auditor	6	64
Demands payable out of, approval of	13	80
Money, how to be drawn	6	64
What moneys go into	1	74
TROLLEY WIRES. See OVERHEAD WIRES.		
TRUSTS.		
Supervisors to provide for execution of	30	44
TUNNELS.		
Construction of	26	42
UNAPPORTIONED FEE FUND.		
Creation of	4	76
In general	1	69
Payment for services of extra assistants out of	12	79
Transfers from	10	78
Warrant for mileage to be paid out of, when, and when not	11	79
What becomes a part of	1 n.	75
UNCLAIMED AND STOLEN PROPERTY.		
Delivery of, to Property Clerk	1	263
Duty of officers as to	4	264
Duty of Property Clerk as to	5	265

	Sec. or Subd.	Page
UNCLAIMED AND STOLEN PROPERTY (Continued).		
Lost, stolen, or unclaimed property, disposition of...	1	263
Property as evidence in court	4	264
Property of insane persons; duties of officers as to...	3	264
Property of person innocent to be returned	2	264
Sale and disposition of, by Board of Police Commissioners	5	256
Unclaimed property to be sold when	3	264
UNDER SHERIFF.		
Exemption of, from Civil Service provisions	11	320
UNEXPENDED BALANCES.		
May be carried forward	9	64
UNPAID DEMANDS.		
Payment of	6	73
URGENT NECESSITY FUND.		
Provision for	8	64
Publication of resolution calling for money from...	19 n.	22
VACANCIES.		
In Mayor's office, how filled	6	87
Mayor's duties as to, when not provided for in Charter	4	86
Office becomes vacant when	4	86
Same	6 n.	87
VROOMAN ACT.		
And Change of Grade Act	1 n.	211
Comments on	9 n.	180
Does not seem to require preliminary estimate of work	2 n.	159
Estimate of work, whether required	2 n.	159
Same	1 n.	212
Governing law as to sewers, etc	1 n.	226
Street law of Charter	1 n.	155
WAGES OF LABORERS.		
Supervisors to fix	24	41
WARRANT.		
Assessment and diagram, authentication of record....	12 n.	185
Assessment and diagram, recording of	12	185
Countersigning of	12 n.	185
Defective assessments or warrants	12	183
Failure to return; effect of	13	187
For pension from Fire Department; signing, presentation, auditing, and payment	8	286
For street-work, form of	12	183
For street-work, must be recorded	12	183
For street-work, to be returned	13	187
Forged by Deputy Superintendent of Schools, liability for	10	238
Form; service; issuance	12 n.	185

	Sec. or Subd.	Page
WARRANT (Continued).		
Lien of, for two years	12	183
Of Board of Public Works to be attached to assessment	12	183
Restrictions upon drawing of	7	64
Return of	13	188
To be drawn by Auditor	6	64
WARRANT AND BOND CLERK.		
Amount of bond of	2	332
Bail, fixing of	6 n.	126
Duty of, to draw complaints	4 n.	125
Has no power to fix amount of bail	4 n.	125
Office of, always to be open	7	126
WATER.		
Furnishing of	13	36
WATER FRONT.		
Decisions as to	1 n.	228
WATER RATES.		
Power of Supervisors to fix, upon what basis	14 n.	37
WEEKLY STATEMENTS.		
Auditor shall furnish	10	66
WORDS AND PHRASES.		
"Additional macadamizing" means what	25 n.	205
"Block" defined	26	203
"City and County" defined	1	335
"Existing municipality" defined	37	351
"Expense" defined	26	203
"Improvement" defined	26	203
"Improvement" includes school houses	29 n.	345
"Improvement" includes school houses, sewers, etc.	29 n.	344
"Incidental expenses" defined	26, 26 n.	203, 205
"Lowest responsible bidder," meaning of	2 n.	57
"Macadamizing," meaning of	26 n.	205
"Main street" defined	26	203
"Major part of the frontage," meaning of	19 n.	147
"Materials" and "supplies," distinction	32	210
"Owner" of property defined	19	199
"Paved" defined	26	203
"Purchase," definition of	21	24
"Quarter-block" defined	26, 26 n.	203, 205
"Sign" is not a "structure"	1 n.	136
"Street" defined	26	203
"Vacancies" defined	10	338
"Wharfage" and "dockage," distinction between	2n.	229
"Work of art," definition of	10	329
WRITTEN OBJECTIONS. See PROTEST.		

AMENDMENTS

TO THE

CHARTER OF THE CITY AND COUNTY OF SAN FRANCISCO.

Senate Concurrent Resolution No. 1. Approving four certain amendments to the Charter of the City and County of San Francisco, State of California, voted for and ratified by the electors of said City and County of San Francisco, at a general municipal election held therein on the fifth day of November, 1907.

(Stats. and Amdts., First Extraordinary Session, 1907, Concurrent Resolutions, ch. 1.)

Whereas, The City and County of San Francisco, State of California, contains a population of over three hundred and forty thousand inhabitants, and has been ever since the eighth day of January in the year one thousand nine hundred, and is now organized and acting under a Freeholders' Charter, adopted under and by virtue of Section Eight of Article Eleven of the Constitution of the State of California, which Charter was duly ratified by the qualified electors of said City and County at an election held for that purpose on the twenty-sixth day of May, one thousand eight hundred and ninety-eight, and approved by the Legislature of the State of California on the twenty-sixth day of January, one thousand eight hundred and ninety-nine (Statutes of 1899, page 241), and which Charter was not amended within an interval of two years immediately prior to the fifth day of November, one thousand nine hundred and seven; and

Whereas, The legislative authority of said City and County, namely the Board of Supervisors thereof, duly proposed to the qualified electors of the City and County of San

Francisco, twenty-one certain amendments to the Charter of said City and County of San Francisco by the submission of twenty-one proposals, entitled, as follows, to wit:

Charter Amendment No. 1, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Sections 10 and 12 of Article XII, and Section 29 of Article XVI thereof, relating to bonds issued for the acquisition of public utilities and the character of such bonds, the registration thereof, and the levy of taxes to provide for the interest thereon and a sinking fund therefor, and to bonds issued for the acquisition of land or lands and the construction or acquisition of any permanent building or buildings, improvement or improvements, and the character and registration of such bonds and the proceedings for the issuance thereof."

Charter Amendment No. 2, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by adding to Chapter 1 of Article II thereof a new section to be numbered 23, relating to the recall of elected officers."

Charter Amendment No. 3, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 12 of Chapter 1 of Article III thereof, relating to the apportionment of the income and revenue of the several funds and a provision for income to pay interest on the bonded indebtedness and provide for the sinking funds."

Charter Amendment No. 4, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 2 of Chapter III of Article IV thereof, relating to the custody by the Treasurer of public funds and authorizing their deposit in certain banks upon certain terms and conditions."

Charter Amendment No. 5, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 21 of Chapter 1 of Article VI thereof, relating to contracts entered into by the Board of Public Works of the City and County, and bonds to be given in connection with the same, and the character, terms and conditions of such contracts, and permitting progressive payments to be provided for thereon, upon certain terms and conditions."

Charter Amendment No. 6, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 2 of Article V thereof, relating to the bonds of officers of the City and County."

Charter Amendment No. 7, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 8 of Chapter 1 of Article III thereof, relating to the appropriation by the Supervisors of said City and County for urgent necessities not otherwise provided for by law."

Charter Amendment No. 8, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Chapters 8, 4 and 3 of Article IX thereof, relative to the composition of the personnel of the companies of the Fire Department and the salaries and vacations of the members thereof."

Charter Amendment No. 9, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by adding three new sections thereto, to be known as Sections 14, 15 and 16 of Article XII thereof, relating to the power of the City and County to acquire, operate, maintain, sell or lease public utilities; relating to the acquisition of lands for water purposes; and relating to the disposition of the rents received from public utilities and the keeping of accounts relative to such public utilities."

Charter Amendment No. 10, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by adding to Chapter 2, Article II thereof, a new section to be known and numbered as Section "9," relating to the sale of lands by the City and County."

Charter Amendment No. 11, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by repealing Section 20, Chapter III, Article VI of said Charter, and by adding a new Chapter to said Article of said Charter, to be known and designated as Chapter 6 thereof, all relating to the change or modification of street grades and the performance of street work in connection therewith."

Charter Amendment No. 12, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by repealing Sections Nos. 1 to 19 inclusive of Chapter III of Article VI of said Charter and by adding new sections to said Chapter of said Article of said Charter, to be known and designated as Sections 1 to 19 inclusive thereof, all relating to the opening, extending, widening, straightening or closing up of streets and the performance of street work in connection therewith, and the condemnation and acquisition of land and property necessary therefor."

Charter Amendment No. 13, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 5 of Article 1 thereof, relating to the liability for damages of said City and County and its officials."

Charter Amendment No. 14, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending subdivision 11 of Section 1 of Chapter III of Article VII thereof, relating to the leasing of real property of the School Department."

Charter Amendment No. 15, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Subdivision 3 of Section 1, of Chapter II, of Article II thereof, relating to the powers of the Supervisors of said City and County to grant permits for spur or side tracks and running cars thereon on any public street or portion thereof within said City and County."

Charter Amendment No. 16, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 2 of Chapter III of Article II thereof, relating to official advertising."

Charter Amendment No. 17, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending subdivision 14, of Section 1, of Chapter II, of Article II thereof, relating to the regulation of telephone charges."

Charter Amendment No. 18, entitled "Describing and setting forth an amendment to the Charter of the City and County of San Francisco, State of California, by amending Section 1 of Article XIV thereof, and by adding thereto a new article, to be known and numbered as Article XIV-A, relating to children's playgrounds and public recreation centers outside of Golden Gate Park, and creating a Playground Commission."

Charter Amendment No. 19, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Sections 1 and

2 of Article X thereof, relating to the Department of Public Health."

Charter Amendment No. 20, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 1 of Chapter V of Article VIII, and Section 1 of Chapter VI of Article VIII, thereof, relative to the salaries of members of the Police Department."

Charter Amendment No. 21, entitled "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend Sections 2 and 3 of Chapter IX, Article IX of the Charter of said City and County, relative to the salaries of the Chief and of the employees of the Department of Electricity." And

Whereas, Said twenty-one proposals aforementioned containing said proposed amendments to said Charter were, in accordance with the provisions of Section Eight of Article Eleven of the Constitution of the State of California, published for twenty days after their passage, in "The Evening Post," a daily newspaper of general circulation in the City and County of San Francisco, and the official newspaper of said City and County; and

Whereas, The said legislative authority of said City and County, did by Resolution No. 1308 (New Series) of the Board of Supervisors, passed September 16, 1907, instruct the Board of Election Commissioners of said City and County to place upon the ballot at a general municipal election to be held in said City and County of San Francisco on the Fifth day of November, One Thousand Nine Hundred and Seven, the said twenty-one several proposals to amend the Charter of the City and County of San Francisco; and

Whereas, Said general municipal election was held in said City and County of San Francisco on the Fifth day of November One Thousand Nine Hundred and Seven, which day was more than forty days after said proposed amendments had been published for Twenty days in "The Evening Post" newspaper; and

Whereas, On the Eleventh day of November One Thousand Nine Hundred and Seven and thereafter, at meetings duly convened in accordance with law, and the Charter of the City and County of San Francisco, the Board of Election Commissioners of the said City and County duly and regularly canvassed the returns of said general municipal election, and duly declared the results thereof, said Board being by law and the Charter authorized to conduct, manage and control the holding of elections and all matters pertaining to elections in said City and County; and

Whereas, At said general municipal election so held on the Fifth day of November One Thousand Nine Hundred and Seven, twenty of said proposed amendments were ratified by a majority of the electors voting thereon, and one of said proposed amendments received less than a majority of the votes of said electors; and

Whereas, Thereafter, to wit, on the Fifteenth day of November One Thousand Nine Hundred and Seven, the said Board of Election Commissioners duly filed with the Board of Supervisors the "Official Statement of Votes polled at the General Municipal Election held in the City and County of San Francisco, State of California, on Tuesday, the Fifth day of November, A. D. 1907, for Charter Amendments . . . ," and also filed a duplicate thereof in the Office of the Secretary of State of California; and

Whereas, The Governor of the State of California by virtue of the power and authority vested in him by Section Nine, Article Five of the Constitution of the State of California has convened the Legislature to meet and assemble in extraordinary session on Tuesday, the Nineteenth day of November, A. D. 1907, for the purpose among other things, of taking legislative action upon the four amendments to the Charter of the City and County of San Francisco hereinafter set forth; and

Whereas, The said four amendments so ratified by the Electors of the City and County of San Francisco at said General Municipal Election are now submitted to the Legislature of the State of California for approval or rejection as a whole without power of alteration or amendment, in accordance with Section Eight of Article Eleven of the Constitution of the State of California, and are in words and figures as follows, to wit:

That Section 10 of Article XII of the Charter be amended to read as follows:

Sec. 10. The bonds issued under the provisions of this article shall be of such form as the Supervisors in the ordinance calling the election therefor shall determine; but such bonds shall be payable, interest and principal, in gold coin of the United States. The interest on such bonds shall not exceed 5 per cent per annum, and they shall be redeemed at such times and in such amounts as the Supervisors shall determine, as set forth in the ordinance calling the special election; provided, that redemption of such bonds shall begin in not more than eighteen years and shall be completed in not more than seventy-five years from the date of the issue.

The bonds so issued shall be exempt from all taxation for municipal purposes and shall be issued in denominations of not less than ten dollars and not more than one thousand dollars, and preference in the sale and allotment thereof shall be given to subscribers for the smallest amounts and the lowest denominations.

The Supervisors shall fix the times and places at which the payment of interest or principal may be made.

Such bonds when issued may be sold by the Supervisors from time to time, as required, and in such quantities as they may determine. When such bonds are offered for sale they shall be advertised in the official paper and otherwise if so ordered by the Supervisors and sealed proposals for the purchase of the whole or any part thereof offered shall be opened at the time specified in such advertisements. All proposals for the purchase of such bonds shall be accompanied by a deposit of 5 per cent of the amount bid in lawful money of the United States or by a deposit of a certified check payable to the Clerk of the Board of Supervisors of the City and County for a like sum, provided that no deposit need exceed the sum of ten thousand dollars, and that no deposit need be given by the State of California, which money or check shall be forfeited by the bidder in case he fails to accept and pay for the bonds bid for by him if his bid is accepted. Bonds shall be sold to the highest bidder for not less than par, but the Supervisors shall have the right to reject any or all bids made for the purchase thereof. If less than the amount of bonds offered shall be sold, the Supervisors may, with the concurrence of fourteen members and the Mayor, place such unsold bonds on sale at the City Treasury, or at branches thereof established by the Treasurer for public convenience; and such bonds may be sold to any applicant at such prices as may be fixed by the Supervisors, provided that such prices shall not be less than par and accrued interest.

The proceeds of any sale of bonds shall be placed in the treasury to the credit of the proper fund, and shall be applied exclusively to the purposes and objects mentioned in the ordinance authorizing their issue until such objects are fully accomplished; after which, if any surplus remains, such surplus may be transferred to the general fund, except that if such surplus exceeds the sum of two thousand dollars, then such surplus and the whole thereof shall be transferred to the appropriate fund or funds to pay the interest and maintain the sinking fund or provide for the retirement of the bonded indebtedness in connection with which such surplus remains.

If the bonds or any of them offered for sale shall remain unsold the Supervisors may so declare, and may, with the concurrence of fourteen members and the Mayor, cancel such unsold bonds, provided that no bonds shall be canceled as aforesaid unless the same have been offered for sale by advertisement, as above provided, at least three separate times at intervals of not less than thirty days, and provided that no such bonds shall be canceled by the Supervisors as aforesaid for which par or above has been bid by any bona fide responsible bidder or bidders.

The provisions of this section, regarding the cancelation of unsold bonds, shall apply to any bonds that have been heretofore issued or to any bonds that have been heretofore authorized by a vote of the electors of the City and County under this section or under Section 29 of Article XVI of this Charter, and that remain unsold after efforts to sell the same shall have been made as above provided.

Whenever the owner of any coupon bond, or of any bond payable to bearer, already issued or hereafter issued by the City and County shall present any such bond to the Treasurer with a request for the conversion of such bond into a registered bond, such Treasurer shall cut off and cancel the coupons of any such coupon bond so presented, and shall stamp, print, or write upon such coupon bond or such other bond payable to bearer, so presented, either upon the back or upon the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner, and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter, and from time to time, any such bond may be transferred by such registered owner in person, or by attorney duly authorized on presentation of such bond to Treasurer, and the bond be again registered as before, a similar statement being stamped, printed or written thereon. Such statement stamped, printed or written upon any such bond may be in substantially the following form:

(Date — giving month, year and day.)

This bond is registered pursuant to Charter of the City and County of San Francisco, State of California, in the name of —— (here insert name of owner), and the interest and principal thereof are hereafter payable to such owner.

—— ——, Treasurer.

After any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. Such Treasurer shall keep in his office a book or books which shall, at all times, show what bonds are registered and in whose names, respectively.

That Section 12 of Article XII of the Charter be amended to read as follows:

Sec. 12. At the time of levying the municipal tax, and in the manner provided for such tax levy, the Supervisors shall levy and collect annually a tax sufficient to pay the annual interest on such bonds and also such part of the bonded municipal indebtedness as will fall due within the succeeding fiscal year, and as may be necessary to provide for the sinking fund payments of the next succeeding fiscal year; provided that when the interest and sinking fund payments for any fiscal year on the bonds issued for any public utility can be met out of the surplus earnings of such public utility for the preceding fiscal year, no tax shall be levied for such purpose. Such taxes shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the same time and in the same manner as other municipal taxes are collected.

That Section 29 of Article XVI of the Charter be amended to read as follows:

Sec. 29. When the Supervisors shall determine that the public interest requires the acquisition of any land or lands or the construction or acquisition of any permanent building or buildings, improvement or improvements, the cost of which, in addition to the other expenses of the City and County, will exceed the income and revenue provided for the City and County for any one year, they must, by ordinance, submit a proposition or propositions to incur a bonded indebtedness for such purpose or purposes to the electors of the City and County at a special election to be held for that purpose only. All provisions of this Charter, as the same shall read at the time of submitting such propositions to the electors, providing for the acquisition of public utilities, so far as the same are applicable, shall apply to the manner of submitting such proposition or propositions, to the issuance, character and registration of said bonds and to the time when, and the kind of money in which said bonded indebtedness shall be payable.

The proceeds of any sale of bonds shall be placed in the Treasury to the credit of the proper fund and shall be applied exclusively to the purposes and objects mentioned in the ordinance authorizing their issuance until such objects are fully accomplished, after which, if any surplus remains, such surplus may be transferred to the general fund, except that if such fund exceeds the sum of two thousand dollars then such surplus and the whole thereof shall be transferred to the appropriate fund or funds to pay the interest and maintain the sinking fund or provide for the retirement of the bonded indebtedness in connection with which such surplus remains.

That Section 2 of Chapter III of Article IV of said Charter be amended to read as follows:

Sec. 2. The Treasurer shall receive and safely keep all moneys which shall be paid into the Treasury. Except as hereinafter provided, he shall not lend, exchange, use nor deposit the same, or any part thereof, to or with any bank, banker or person; nor pay out any part of such moneys, nor allow the same to pass out of his personal custody, except upon demands authorized by law or this Charter, and after they shall have been approved by the Auditor. At the close of business each day, he shall take an account of and enter in the proper book the exact amount of money on hand. At the end of every month he shall make out and file with the Mayor and publish quarterly in the official newspaper a statement of the condition of the treasury, showing the amounts of receipts into and payments from the treasury, and on what account, and out of what fund. If he violate any of the provisions of this section, he shall be guilty of misconduct in office, and be liable to removal therefrom, and be proceeded against accordingly. He shall keep the accounts belonging to each fund separate and distinct, and shall in no case pay demands chargeable against one fund out of moneys belonging to another. He shall be in personal attendance at his office each day during office hours. No fees of any kind shall be retained by him, but the same, from whatever source received or derived, shall be paid by him into the treasury.

All moneys paid into the treasury of the City and County may be deposited by the Treasurer, upon the written consent of the Mayor, in any licensed national bank or banks, within this State, or in any bank, banks or corporations authorized and licensed to do a banking business, and organized under the laws of this State, provided that such bank or banks in which such moneys are deposited shall furnish as security for such deposits, bonds of the United States or of this State, or of any County, Municipality or School District within this State, approved by the Treasurer and the City Attorney. The market value of the bonds furnished as security, shall be at least 10 per cent in excess of the amount of the deposit secured thereby; but the amount of the deposit shall in no case exceed the face value of the bonds furnished as security therefor. And provided that such bank or banks shall pay a reasonable rate of interest, not less than 2 per cent per annum, on the daily balances therein deposited.

The rate of interest shall be fixed annually as herein provided in the month of January of each year on all deposits to be made for such year; provided, that the rate of interest for the year ending December 31st, 1907, may be fixed as herein provided within ten days after this section goes into effect. The rate of interest shall be fixed by the Treasurer, the Auditor and the Mayor, and the same reported in writing to the Board of Supervisors immediately. Said rate of interest shall be a reasonable rate and not less than 2 per cent per annum on the daily balances deposited; and the rate of interest so established for each year as herein provided, shall be the uniform rate of interest required from all banks receiving deposits from the City and County for that year. Interest on all moneys deposited as herein provided for shall belong to the City and County and shall be paid quarterly into the general fund of the City and County except where the law or this Charter otherwise directs.

It shall be the duty of the Treasurer to receive from the bank in which the deposit is made, a receipt or receipts in duplicate, showing the date and amount of deposit and rate of interest to be paid thereon, one copy of which said Treasurer shall keep on file in his office and he shall file one copy with the Auditor.

The Treasurer shall keep a record in his office, which shall be open to public inspection, showing at all times the amount of money on deposit in all banks in which the same is deposited, and dates of deposit; also a record of all banks making application for the deposit of the public funds.

The total amount of public moneys on deposit in any bank shall not at any time exceed 50 per cent of the paid-up capital stock of such depository bank or banks. The Treasurer shall not have on deposit at any one time more than 10 per cent of the public moneys under his control and available for deposit in any bank while there are other qualified banks requesting such deposits, provided, that the Treasurer shall not be required to deposit public moneys in any bank outside of the City and County.

The receipt issued by any bank for deposits made therein, together with the bonds held as security therefor, shall be held by the Treasurer and be recognized and counted as cash to the amount recited in the receipt by the officers required by law to count the same.

Deposits, with interest thereon, shall be subject to withdrawal on demand of the Treasurer, conjointly with that of the Mayor, and any bank receiving the deposit of public moneys, may, at any time, return the same to the Treasurer, together with interest to date of return, and it shall be the duty of the Treasurer, upon receiving the return of such deposit, to immediately return to such bank all bonds held as security for the deposit returned. When the Treasurer withdraws his deposit, he shall return, on the demand of the bank, such bonds as were held as security for the deposit or portion thereof withdrawn.

Should any bank fail to pay any public moneys held on deposit as herein provided, the Treasurer (with the written consent of the Mayor) may, after ten days' written notice to such bank, proceed to sell at public or private sale such of the bonds held by him as security as he may see fit; provided, however, that he shall sell no bonds for less than their face value except at public sale, after ten days' printed notice in the official newspaper. The proceeds of such sale, after paying all expenses, shall be credited to the account of the bank, which deposits the bonds as collateral. Any bank failing to make payment may, at any time before the sale of the bonds is completed, stop such sale by repaying all the moneys deposited with it, together with any expense that may have been incurred by the Treasurer as the result of such failure. Should the proceeds of any such sale fail to fully repay any deposit, the balance remaining unpaid may be collected in an action at law in the name of the City and County.

The Treasurer shall not be responsible for any loss of public moneys resulting from the deposit thereof when made in accordance with the provisions of this act. It shall be the duty of the Treasurer to safely keep all evidence of indebtedness issued by banks for deposits made therein and bonds deposited as security and the Treasurer shall be responsible for such evidence of indebtedness and for bonds held as security therefor, together with the interest thereon and the proceeds of any sale of such bonds; and the Treasurer shall be responsible to such bank for the safe return of the securities furnished by it to the Treasurer.

The expenses of transportation of moneys to or from the Treasury to such depositaries shall be borne by such depositaries.

Nothing in this section contained shall prevent the City and County from buying bonds or otherwise investing its money in any manner now provided by law or this Charter and nothing herein contained as to the disposition of interest and public moneys deposited shall apply to any money received or held by the City and County wherein any law or this Charter provides for the payment of interest or profit thereon into any particular fund.

That Section 1 of Chapter VIII, Article IX, of said Charter be amended, and that a new section be added thereto, to read as follows:

CHAPTER VIII.

Salaries and Vacations.

Section 1. The officers and members of the Fire Department shall receive annual salaries as follows: Chief Engineer, five thousand dollars; First Assistant Chief Engineer, thirty-six hundred dollars; Second Assistant Chief Engineer, three thousand dollars; Battalion Chiefs, each, twenty-seven hundred dollars; Superintendent of Engines, twenty-seven hundred dollars; the Clerk and Commissary of the Corporation Yards, eighteen hundred dollars; Captains, each, eighteen hundred and sixty dollars; Lieutenants, each, seventeen hundred and ten dollars; Engineers, each, sixteen hundred and eighty dollars; Drivers, Stokers, Tillermen, Truckmen and Hosemen, for the first year of service, each, twelve hundred dollars; for the second year of service, each, thirteen hundred and twenty dollars; and for the third year of service, and thereafter, each, fourteen hundred and forty dollars; Hydrantmen, each, twelve hundred dollars; Superintendent of Horses, eighteen hundred and sixty dollars; Draymen, each, twelve hundred dollars; Watchmen, each, twelve hundred dollars; Hostlers, each, twelve hundred dollars; Pilots of Fire Boats, each, twenty-one hundred dollars; Engineer of Fire Boats, each, twenty-one hundred dollars; Firemen of Fire Boats, each, twelve hundred dollars.

Sec. 2. Each officer and member of the Fire Department shall be allowed, during each year of his service, a vacation of not less than fifteen days' duration, and also leaves of absence of not less than twenty-four hours' duration, not less times than once in each week. Said vacations and leaves of absence to be without loss of pay.

That Section 3 of Chapter VIII, Article IX, be amended to read as follows:

Sec. 3. The commissioners shall, upon the application, duly verified, of any officer or member of the Fire Department who shall have served as an active member of the Fire Department for twenty-five years continuously next preceding the date of said application, or, of any officer or member of the Fire Department who shall have reached the age of fifty-five years, and shall have served as an active member of the Fire Department for twenty years continuously next preceding the date of said application, retire and relieve from service such officer or member; provided also, that the Commissioners may, by a unanimous vote, retire and relieve from service, any aged, disabled or infirm officer or member of the Fire Department who has arrived at the age of sixty years, and has served as an active member of the department for twenty years continuously next preceding such age, and who upon examination by two regularly certificated practising physicians, appointed by the Commissioners for that purpose, may be ascertained to be by reason of such age, infirmity, or other disability, unfit for the performance of his duties. Such retired officer or member shall receive from the Fireman's Relief Fund a monthly pension equal to one-half the amount of the salary attached to the rank held by him for three years prior to the date of his retirement, and the same shall cease at his death.

That Section 1 of Chapter IV, Article IX, be amended to read as follows:

CHAPTER IV.

Fire Companies.

Section 1. Each Steam Fire Engine Company shall be composed of not more than one Captain, one Lieutenant, one Engineer, one Driver, one Stoker and Six Hosemen.

Each Hook and Ladder Company shall be composed of not more than one Captain, one Lieutenant, one Driver, one Tillerman and eight Truckmen.

Each Chemical Engine Company shall be composed of not more than one Captain, one Lieutenant, one Driver and one Hoseman.

Each Water Tower Company shall be composed of not more than one Captain, one Lieutenant, one Driver, and one Hoseman.

Each Fire Boat Company shall be composed of not more than one Captain, one Lieutenant, two Pilots, two Engineers, three Firemen and twelve Hosemen.

That a new section to be known and designated as Section 4 be added to Chapter III, Article IX, to read as follows:

Sec. 4. The Chief Engineer may detail for duty as Chiefs' Operators such members of the Department as he may select, not to exceed one such Operator for each Chief, Assistant Chief and Battalion Chief. The members so detailed shall be known and ranked as Chiefs' Operators. Each of said Chiefs' Operators shall receive an annual salary of fifteen hundred dollars. They may be removed from such detail at any time, by the Chief Engineer.

That Section 1, Chapter V of Article VIII, of the Charter of the City and County of San Francisco, be amended to read as follows:

Section 1. Subordinate officers of the Police Department shall consist of Captains, who shall each receive an annual salary of twenty-four hundred dollars; Lieutenants, who shall each receive an annual salary of one thousand nine hundred and twenty dollars; Sergeants, who shall each receive an annual salary of one thousand six hundred and eighty dollars; and Corporals, who shall each receive an annual salary of one thousand five hundred and sixty dollars.

That Section 1, Chapter VI of Article VIII, of the Charter of the City and County of San Francisco, be amended to read as follows:

Section 1. The police force of the City and County shall not exceed one police officer for each five hundred inhabitants thereof. Police officers shall each receive an annual salary of one thousand four hundred and sixty-four dollars.

State of California, }
City and County of San Francisco, } ss.

This is to certify that we, Edward R. Taylor, Mayor of the City and County of San Francisco, and John E. Behan, Clerk of the Board of Supervisors of said City and County, have compared the foregoing proposed and ratified amendments to the Charter of the said City and County of San Francisco with the original proposals submitting the same to the electors of said City and County at a General Municipal Election held on Tuesday, the Fifth day of November One Thousand Nine Hundred and Seven, and find that the foregoing is a full, true, correct and exact copy thereof, and we further certify that the facts set forth in the preamble preceding said amendments to said Charter are and each of them is true.

In witness whereof, We have hereunto set our hands and caused the same to be authenticated by the seal of said City and County of San Francisco, this 16th day of November One Thousand Nine Hundred and Seven.

EDWARD R. TAYLOR,
Mayor of the City and County of San Francisco.
[Seal] JOHN E. BEHAN,
Clerk of the Board of Supervisors of the City and County of San Francisco.

Now, therefore be it

Resolved, by the Senate of the State of California, the Assembly thereof concurring (a majority of all of the members elected to each house voting for and concurring herein), That said amendments to the Charter of the City and County of San Francisco as proposed to and adopted and ratified by the electors of said City and County, and as hereinbefore fully set forth, be and the same are, and each of them is, hereby approved as a whole without amendment or alteration, for and as amendments to, and as part of the Charter of the City and County of San Francisco.

Senate Concurrent Resolution No. 1. Approving sixteen certain amendments to the Charter of the City and County of San Francisco, State of California, voted for and ratified by the electors of said City and County of San Francisco, at a general municipal election held therein on the fifth day of November, 1907.

(Stats. and Amdts., Second Extraordinary Session, 1907, Concurrent Resolutions, ch. 1.)

Whereas, The City and County of San Francisco, State of California, contains a population of over three hundred and forty thousand inhabitants, and has been ever since the eighth day of January in the year one thousand nine hundred, and is now organized and acting under a Freeholders' Charter, adopted under and by virtue of Section eight of Article eleven of the Constitution of the State of California, which Charter was duly ratified by the qualified electors of said City and County at an election held for that purpose on the twenty-sixth day of May, one thousand eight hundred and ninety-eight, and approved by the Legislature of the State of California on the twenty-sixth day of January, one thousand eight hundred and ninety-nine (Statutes of 1899, page 241), and which Charter was not amended within an interval of two years immediately prior to the Fifth day of November, one thousand nine hundred and seven; and

Whereas, The legislative authority of said City and County, namely the Board of Supervisors thereof, duly proposed to the qualified electors of the City and County of San Francisco, twenty-one certain amendments to the Charter of said City and County of San Francisco by the submission of twenty-one proposals, entitled, as follows, to wit:

Charter Amendment No. 1, entitled — " Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Sections 10 and 12 of Article XII, and Section 29 of Article XVI thereof, relating to bonds issued for the acquisition of public utilities and the character of such bonds, the registration thereof, and the levy of taxes to provide for the interest thereon and a sinking fund therefor, and to bonds issued for the acquisition of land or lands and the construction or acquisition of any permanent building or buildings, improvement or improvements, and the character and registration of such bonds and the proceedings for the issuance thereof."

Charter Amendment No. 2, entitled — " Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by adding to Chapter 1 of Article II thereof a new section to be numbered 23, relating to the recall of elected officers."

Charter Amendment No. 3, entitled — " Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 12 of Chapter 1 of Article III thereof, relating to the apportionment of the income and revenue of the several funds and a provision for income to pay interest on the bonded indebtedness and provide for the sinking funds."

Charter Amendment No. 4, entitled — " Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 2 of Chapter III of Article IV thereof, relating to the custody by the Treasurer of public funds and authorizing their deposit in certain banks upon certain terms and conditions."

Charter Amendment No. 5, entitled — " Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 21 of Chapter 1 of Article VI thereof, relating to contracts entered into by the Board of Public Works of the City and County, and bonds to be given in connection with the same, and the character, terms and conditions of such contracts and permitting progressive payments to be provided for thereon, upon certain terms and conditions."

Charter Amendment No. 6, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 2 of Article V thereof, relating to the bonds of officers of the City and County."

Charter Amendment No. 7, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 8 of Chapter 1 of Article III thereof, relating to the appropriation by the Supervisors of said City and County for urgent necessities not otherwise provided for by law."

Charter Amendment No. 8, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Chapters 8, 4 and 3 of Article IX thereof, relative to the composition of the personnel of the companies of the Fire Department and the salaries and vacations of the members thereof."

Charter Amendment No. 9, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by adding three new sections thereto, to be known as Sections 14, 15 and 16 of Article XII thereof, relating to the power of the City and County to acquire, operate, maintain, sell or lease public utilities; relating to the acquisition of lands for water purposes; and relating to the disposition of the rents received from public utilities and the keeping of accounts relative to such public utilities."

Charter Amendment No. 10, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by adding to Chapter 2, Article II thereof, a new section to be known and numbered as Section "9," relating to the sale of lands by the City and County."

Charter Amendment No. 11, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by repealing Section 20, Chapter III, Article VI of said Charter, and by adding a new Chapter to said Article of said Charter, to be known and designated as Chapter 6 thereof, all relating to the change or modification of street grades and the performance of street work in connection therewith."

Charter Amendment No. 12, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by repealing Sections Nos. 1 to 19 inclusive of Chapter III of Article VI of said Charter, and by adding new sections to said Chapter of said Article of said Charter, to be known and designated as Sections 1 to 19 inclusive thereof, all relating to the opening, extending, widening, straightening or closing up of streets and the performance of street work in connection therewith, and the condemnation and acquisition of land and property necessary therefor."

Charter Amendment No. 13, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 5 of Article 1 thereof, relating to the liability for damages of said City and County and its officials."

Charter Amendment No. 14, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Subdivision 11 of Section 1 of Chapter III of Article VII thereof, relating to the leasing of real property of the School Department."

Charter Amendment No. 15, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Subdivision 3 of Section 1, of Chapter II of Article II thereof, relating to the powers of the Supervisors of said City and County to grant permits for spur or side tracks and running cars thereon on any public street or portion thereof within said City and County."

Charter Amendment No. 16, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 2 of Chapter III of Article II thereof, relating to official advertising."

Charter Amendment No. 17, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Subdivision 14, of Section 1, of Chapter II, of Article II thereof, relating to the regulation of telephone charges."

Charter Amendment No. 18, entitled — "Describing and setting forth an amendment to the Charter of the City and County of San Francisco, State of California, by amending Section 1 of Article XIV thereof, and by adding thereto a new article, to be known and numbered as Article XIV-A, relating to children's playgrounds and public recreation centers outside of Golden Gate Park, and creating a Playground Commission."

Charter Amendment No. 19, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Sections 1 and 2 of Article X thereof, relating to the Department of Public Health."

Charter Amendment No. 20, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend the Charter of said City and County by amending Section 1 of Chapter V of Article VIII, and Section 1 of Chapter VI of Article VIII, thereof, relative to the salaries of members of the Police Department."

Charter Amendment No. 21, entitled — "Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco, State of California, to amend Sections 2 and 3 of Chapter IX, Article IX of the Charter of said City and County, relative to the salaries of the Chief and of the employees of the Department of Electricity"; and

Whereas, Said twenty-one proposals aforementioned containing said proposed amendments to said Charter were, in accordance with the provisions of Section Eight of Article Eleven of the Constitution of the State of California, published for twenty days after their passage, in "The Evening Post," a daily newspaper of general circulation in the City and County of San Francisco, and the official newspaper of said City and County; and

Whereas, The said legislative authority of said City and County, did by Resolution No. 1308 (New Series) of the Board of Supervisors, passed September 16, 1907, instruct the Board of Election Commissioners of said City and County to place upon the ballot at a general municipal election to be held in said City and County of San Francisco on the Fifth day of November, One Thousand Nine Hundred and Seven, the said twenty-one several proposals to amend the Charter of the City and County of San Francisco; and

Whereas, Said general municipal election was held in said City and County of San Francisco on the Fifth day of November One Thousand Nine Hundred and Seven, which day was more than forty days after said proposed amendments had been published for Twenty days in "The Evening Post" newspaper; and

Whereas, On the Eleventh day of November One Thousand Nine Hundred and Seven and thereafter, at meetings duly convened in accordance with law, and the Charter of the City and County of San Francisco, the Board of Election Commissioners of the said City and County duly and regularly canvassed the returns of said general municipal election, and duly declared the results thereof, said Board being by law and the Charter authorized to conduct, manage and control the holding of elections and all matters pertaining to elections in said City and County; and

Whereas, At said general municipal election so held on the Fifth day of November One Thousand Nine Hundred and Seven, twenty of said proposed amendments were ratified by a majority of the electors voting thereon, and one of said proposed amendments received less than a majority of the votes of said electors; and

Whereas, Thereafter, to wit, on the Fifteenth day of November One Thousand Nine Hundred and Seven, the said Board of Election Commissioners duly filed with the Board of Supervisors the "Official Statement of Votes polled at the General Municipal Election held in the City and County of San Francisco, State of California, on Tuesday, the Fifth day of November, A. D. 1907, for Charter Amendments . . . ," and also filed a duplicate thereof in the Office of the Secretary of State of California; and

Whereas, The Governor of the State of California by virtue of the power and authority vested in him by Section Nine Article Five of the Constitution of the State of California convened the Legislature to meet and assemble in extraordinary session on Tuesday, the Nineteenth day of November, A. D. 1907, for the purpose among other things, of taking legislative action upon four of said amendments to the Charter of the City and County of San Francisco, namely: that Numbered One, relating to municipal bonds; that Numbered Four, relating to deposits of public funds in banks; that Numbered Eight, relating to salaries and vacations of members of the Fire Department; and that Numbered Twenty, relating to salaries of members of the Police Department; and

Whereas, Said Four amendments were presented to the Legislature of the State of California convened in extraordinary session as aforesaid, and were approved by said Legislature in the manner required by law; and

Whereas, The Governor of the State of California on the twenty-third day of November, A. D., 1907, again convened the Legislature to meet in extraordinary session on the twenty-third day of November, A. D., 1907, for the purpose of taking legislative action upon the sixteen amendments to the Charter of the City and County of San Francisco hereinafter set forth, which amendments although ratified by the electors of said City and County on the Fifth day of November, A. D., 1907, were not included in the Proclamation of said Governor convening the Legislature in extraordinary session on the Nineteenth day of November A. D. 1907; and

Whereas, The said sixteen amendments so ratified by the electors of the City and County of San Francisco at said General Municipal Election are now submitted to the Legislature of the State of California for approval or rejection as a whole without power of alteration or amendment, in accordance with Section Eight of Article Eleven of the Constitution of the State of California, and are in words and figures as follows, to wit:

That Chapter 1 of Article II of said Charter be amended by adding thereto a new section, to be numbered Section 23, and to read as follows:

Sec. 23. The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows:

A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least 30 per centum of the entire vote cast at the election at which the officer sought to be removed was elected demanding the election of a successor to the person sought to be removed, shall be filed with the Board of Election Commissioners; provided, that the petition sent to the Board of Election Commissioners shall contain a general statement of the grounds for which the removal is sought. The petition shall be presented, and the signatures thereto shall be authenticated and verified as in this Charter provided, in relation to petitions for the submission of Charter amendments and ordinances to the electors.

If the petition shall be found to be sufficient, the Board of Election Commissioners shall transmit the same to the Board of Supervisors without delay, and attach thereto their certificate showing the result of said examination. The Board of Supervisors shall thereupon call a special election, fix the date for holding the same, which date shall be not less than thirty days nor more than forty days from the date of the reception of said petition and certificate from the Board of Election Commissioners.

The Board of Election Commissioners shall make or cause to be made publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared in all respects as are other municipal elections. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself; and unless he requests otherwise in writing, the Board of Election Commissioners shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person than the incumbent receive the highest number of votes, the incumbent shall thereupon be deemed removed from the office, upon qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of his election, the office shall be deemed vacant. If the incumbent receives the highest number of votes, he shall continue in office.

That Section 12 of Chapter I of Article III of said Charter be amended to read as follows:

Sec. 12. In making the apportionment the Supervisors shall take into account and apportion to the several funds the income and revenue estimated to arise during the fiscal year from licenses, fees, and other sources, but the income to pay the interest on the bonded indebtedness and to provide for the sinking funds shall always be provided for out of the tax on property, provided, that whenever any bonded indebtedness shall have been incurred for the acquisition of any of the public utilities named in Article XII of this Charter, the surplus earnings of any such utility for the fiscal year may be applied upon the interest and sinking fund of the bonded indebtedness of such utility for the succeeding fiscal year.

That Section 21 of Chapter I, of Article VI, of said Charter be amended to read as follows:

Sec. 21. All contracts shall be drawn under the supervision of the City Attorney, and shall contain detailed specifications of the work to be done, the manner in which it shall be executed, and the quality of the material to be used.

Every contract entered into by the board shall be signed by all the members thereof, and by the other contracting party. All contracts shall be signed in triplicate, one of which, with the specifications and drawings, if any, of the work to be done, and materials to be furnished, shall be filed with the Clerk of the Supervisors; one thereof, with said specifications and drawings, shall be kept in the office of the board, and the other, with said specifications and drawings, shall be delivered to the contractor.

At the same time with the execution of the contract, the contractor shall execute to the City and County and deliver to the secretary of the board a bond in the sum named in the notice for proposals, with two or more sufficient sureties to be approved by the board, or shall deposit with the secretary a certified check upon some solvent bank for said amount, for the faithful performance of the contract. No surety on any bond other than lawfully authorized surety companies shall be taken unless he shall be a payer of taxes on real property, not exempt from execution or subject to homestead claim, the assessed value of which, over and above all encumbrances, is equal in amount to his liabilities on all bonds on which he may be surety to the City and County, and each surety shall justify and make an affidavit (for which a form shall be printed upon said bond) signed by him, that he is assessed upon the last assessment book of the City and County in his own name, for real property, in an amount greater than his liability on all bonds on which he is surety to the City and County, and that the taxes on such property so assessed are not delinquent.

The contract shall specify the time within which the work shall be commenced, and when to be completed, as was specified in the notice inviting proposals therefor. Upon the recommendation of the Board, the Supervisors may extend said time, but in no event shall the time for the performance of said contract be extended by the Supervisors more than 90 days beyond the time originally fixed for its completion; but, on the unanimous recommendation of the Board of Public Works, a further extension may be granted by vote of fourteen members of the Board of Supervisors.

In case of failure on the part of the contractor to complete his contract within the time fixed in the contract, or within such extension of said time as is herein provided, his contract shall be void, and the Supervisors shall not thereafter pay or allow him any further compensation for any work done by him under said contract; and in the case of the improvement of streets, where the work is to be paid for by assessment levied upon real property, no assessment shall be made for the work done under said contract.

Any contract may provide for progressive payments if in the ordinance authorizing or ordering the work permission is given for such a contract. But no progressive payments can be provided for or made at any time which, with prior payments, if there have been such, shall exceed in amount at that time 75 per cent of the value of the labor done and materials furnished and used up to that time, and no contract shall provide for or authorize or permit the payment of more than 75 per cent of the contract price before the completion and acceptance by the proper officer or board of the work done under said contract.

That Section 2 of Article V of said Charter be amended to read as follows:

Sec. 2. The following officers shall respectively execute official bonds to the City and County, with sureties, in the following sums:

Mayor, twenty-five thousand dollars; Auditor, fifty thousand dollars; Treasurer, two hundred thousand dollars; Tax Collector, one hundred thousand dollars; Assessor, fifty thousand dollars; County Clerk, fifty thousand dollars; Recorder, ten thousand dollars; Sheriff, fifty thousand dollars; Coroner, ten thousand dollars; City Attorney, ten thousand dollars; District Attorney, ten thousand dollars; Public Administrator, fifty thousand dollars; Superintendent of Public Schools, five thousand dollars; each Commissioner of Public Works, twenty-five thousand dollars; Clerk of the Supervisors, ten thousand dollars; each Supervisor, five thousand dollars; each School Director, five thousand dollars; each Fire Commissioner, ten thousand dollars; each Police Commissioner, five thousand dollars; each Election Commissioner, ten thousand dollars; Property Clerk of Police Department, ten thousand dollars; the Warrant and Bond Clerk, ten thousand dollars.

In all cases of elective officers, officers appointed by the Mayor, and officers whose bonds are fixed by the Charter, the premium or charge for such bonds shall be paid by the City and County; provided, however, that no premium or charge shall exceed one half of one per cent per annum on the amount of such bond.

That Section 8 of Chapter I of Article III, of said Charter be amended to read as follows:

Sec. 8. The Supervisors may appropriate $100,000 a year for urgent necessities not otherwise provided for by law. No money shall be paid out of this appropriation unless authorized by a five-sixths vote of all the members of the Board of Supervisors, and approved by the Mayor.

That three new sections be added to said Charter, to be known as Sections 14, 15 and 16 of Article XII thereof, to read as follows:

Sec. 14. The City and County shall have power to acquire, construct or complete any public utility from funds derived from taxes levied for that purpose, or from funds derived from the sale of bonds issued for that purpose, as is provided in this Charter, and may operate, maintain, sell or lease the same, subject to the other provisions and limitations of this Charter.

Sec. 15. The Supervisors shall have power, in the name and for the benefit of the City and County, to acquire by purchase or condemnation, subject to the conditions and limitations in this Charter and the general laws of the State prescribed, any lands situated within the State of California necessary for constructing or maintaining canals, aqueducts, reservoirs, tunnels, flumes, ditches, or pipes for conducting or storing water for the use of the City and County, or the inhabitants thereof.

Sec. 16. 1 Whenever any public utility shall be operated by the City and County, the receipts from such utility shall be paid daily into the city treasury and maintained in a special fund set aside for such utility. The Supervisors may, from time to time, make appropriations from such funds for the following purposes:

(a) For the payment of the operating expenses of such utility;

(b) For repairs and reconstruction;

(c) For payment of interest and sinking fund on the bonds issued for the acquisition or construction of such utility;

(d) For extensions and improvements;

(e) For a reserve fund.

2 Whenever the reserve fund shall exceed one-half of the payment for operating expenses in the preceding fiscal year, the Supervisors shall have the power to appropriate such excess to the general fund.

3 The City and County, when owning any public utility, shall keep the books of account for such public utility distinct from other City and County accounts and in such manner as to show the true and complete financial results of such municipal ownership, or ownership and operation, as the

case may be. Such accounts shall be so kept as to show the actual cost to the City and County of the public utility owned; all costs of maintenance, extension and improvement; all operating expenses of every description, and in case of such municipal operation the amounts set aside for sinking fund purposes. If any service shall be furnished for the use of such public utility without charge, the accounts shall show as nearly as possible the value of such service, and also the value of such similar service rendered by the public utility to any other municipal department without charge; such accounts shall also show reasonable allowances for interest, depreciation and insurance, and also estimates of the amount of taxes that would be chargeable against such property if owned by a private corporation. The Supervisors shall cause to be printed annually for public distribution a report showing the financial results, in form as aforesaid, of such municipal ownership and operation. The accounts of such public utility, kept as aforesaid, shall be examined at least one a year by an expert accountant, who shall report to the Supervisors the result of his examination. Such expert accountant shall be selected in such manner as the Supervisors may direct, and he shall receive for his services such compensation, to be paid out of the income or revenues from such public utility, as the Supervisors may prescribe.

That Chapter 2, Article II of said Charter be amended by adding thereto a new section to be known and numbered as "Section 9," and to read as follows:

Sec. 9. The City and County of San Francisco shall have power to sell all lands owned by the City and County between Ninth street and Eighteenth street lying in what was formerly Mission Creek, and any and all lands that may be hereafter acquired, excepting lands for parks, squares and children's playgrounds, and the Board of Supervisors of said City and County may by ordinance determine that the public interest or necessity demands the sale of such lands, so owned or held by the City and County.

Such ordinance must describe the lands to be sold, and the terms of sale, which must be for cash in United States gold coin. The land may be sold in one parcel or in subdivisions, as the Supervisors may, in such ordinance, determine, and sales shall be made by the Mayor, as hereinafter provided.

Every such sale must be at public auction, unless the Supervisors shall, in and by such ordinance, determine that all or a portion of such lands shall be sold at private sale.

When a sale at public auction is to be had, the Clerk of the Board of Supervisors must give notice thereof by publishing the same in the official newspaper, and one other daily newspaper published in the city and county, at least three weeks successively next before the sale, which said notice shall describe the lands to be sold, with common certainty.

Such sales at public auction must be made in the City and County, and must be between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon, and must be made on the day named in the notice of sale, unless the same is postponed.

When it shall have been determined by the Supervisors, as hereinbefore provided, that the sale of such lands shall be at private sale, a notice shall be published in the official newspaper, and one other daily newspaper published in the City and County, for two weeks successively next before the day on or after which the sale is to be made, and the land and tenements to be sold must be described therein with common certainty. The notice must state a day on or after which the sale will be made, and must state that all bids or offers will be received by the Mayor of the City and County, at his office. The day last referred to must be at least fifteen days from the first publication of notice; and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and must be filed with the Mayor, at his office.

No sale of real estate at private sale shall be confirmed by the Supervisors as hereinafter provided, unless the sum offered shall be at least 90 per cent of the appraised value thereof, to be fixed and determined as next hereinafter provided.

An appraisement of such lands shall be made and filed with the Supervisors, within three weeks after the final passage of the ordinance hereinbefore mentioned, by the Mayor, the Assessor, and the chairman of the Finance Committee of the Supervisors, who are hereby constituted a board of appraisement for such purpose.

When a sale shall have been made by the Mayor, at public auction or at private sale, as hereinbefore provided, he shall require from the person to whom the property is sold a deposit amounting to 10 per cent of the sum bid. He shall immediately thereafter, at the next meeting of the Supervisors, report the fact of such sale to the Supervisors, with a statement of the sum bid, and the name of the bidder, with a request that the Board confirm such sale.

The Clerk of the Supervisors shall immediately thereupon give notice by publication in the official newspaper, and one other daily newspaper published in the City and County, that at a meeting of the Supervisors, to be held not less than twenty, nor more than thirty days, from the first publication of such notice, that such sale has been made, the amount for which the property has been sold, and the name of the purchaser. Such notice shall also contain a statement that at such meeting, if an offer of 10 per cent more in amount than that named in said notice shall be made to the Supervisors, in writing, by a responsible person, the Supervisors will confirm such sale to such person, or order a new sale, as hereinafter provided.

At such meeting, if it appears to the Supervisors that the sum bid is not disproportionate to the value of the property sold, and that a greater sum cannot be obtained, or if an increased bid, as hereinbefore mentioned, be made and accepted the Board of Supervisors may, by an ordinance, passed by an affirmative vote, of at least fifteen of its members, confirm such sale, and direct conveyances to be executed by the Mayor. A certified copy of such ordinance shall be recorded in the County Recorder's office in the County in which the property is situated.

The Board of Supervisors may, in its discretion, confirm or refuse to confirm any sale.

In the event of the refusal of the Board of Supervisors to confirm the sale, all proceedings taken as hereinbefore provided, for the sale of the lands shall be void and of no effect.

If the sale is confirmed by the Board of Supervisors, conveyances must thereupon be made by the Mayor to the person to whom the sale shall have been so confirmed, and shall be delivered to him upon payment of the balance of the purchase price. Such conveyances shall be in the name of the City and County, and shall be effective to convey all the right, title and interest of the City and County in and to the lands therein described, to the grantee therein named.

That Section 20 of Chapter III of Article VI of said Charter, providing for the change or modification of street grades, be repealed.

That a new Chapter be added to Article VI of said Charter, to be known and designated as Chapter VI of said Article, said Chapter to read as follows:

CHAPTER VI.

Relating to the Modification or Change of Street Grades and the Performance of Street Work in Connection Therewith.

Section 1. The Board of Supervisors is hereby empowered, on the written recommendation of the Board of Public Works, to change or modify the grade of any public street, avenue, lane, alley, place or court to the grade set out in such recommendation, and to regrade, repave, sewer, sidewalk, curb or otherwise improve the same, so as to conform to such change or modified grade in the manner as hereinafter provided. Before any change of grade is attempted, the Board of Supervisors shall pass a resolution of intention to make such change or modification of grade, and it shall in the same resolution, when regrading, repaving, sidewalking, sewering, curbing or other improvement on such street or streets is contemplated in connection therewith, define and establish the district benefited and to be assessed for the payment of damages and for the expense of regrading, repaving, sewering, sidewalking, curbing, or otherwise improving such street or streets so as to conform with such change or modified grade; and it shall have power at the same time and in the same resolution to provide for the actual cost of performing the work of regrading, repaving, sewering, sidewalking, curbing or otherwise improving such street or streets or portion or portions thereof with the same or other material with which it was formerly graded, paved, sewered, sidewalked, curbed or otherwise improved, briefly describing the work to be done and providing that the cost of the same shall also be assessed upon the same district which is declared to be benefited by such change or modified grade. When a change or modification of grade or grades is proposed to be made upon a street, avenue, alley, lane, court or place, which has already been sewered, paved, curbed or graded, no such change or modification of such grade or grades shall be made unless provision shall also be made for the resewering, repaving, recurbing or regrading of such street, avenue, alley, lane, court or place. One or more streets or blocks of streets may be embraced in the same resolution. Such resolution shall be published in the official newspaper. Such publication shall be made for ten days, and shall describe the proposed change or modification of grade, and when such resolution contemplates such work it shall describe the regrading, repaving, sewering, sidewalking, curbing or other improvement so contemplated, and shall set forth and describe the district to be benefited by such change or modification of grade or regrading, repaving, sewering, sidewalking, curbing or other improvement, and to be assessed for the damages and cost of making the same. Within ten days after the first publication of the resolution of intention the Board of Public Works shall cause to be conspicuously posted along all streets within the district defined in the resolution, or, when no such district is defined, along the street or streets upon which such change or modification of grade or grades is contemplated, notice of the passage of said resolution. Said notices shall be posted not more than one hundred feet apart and shall be headed "Notice of Grade Change" or "Notice of Grade Change and Street Work," as the case may be, in letters not less than two inches in length, and shall, in legible characters, state the fact of the passage of the resolution, its date, the fact of the proposed grade change, and, if any, briefly the work or improvement proposed, and refer to the resolution for further particulars. When no improvements are provided for in connection with the said change or changes of grade or grades, if no protest of the owners of two-thirds of the property fronting on the street or streets, the grade or grades of which is to be changed or modified, shall be filed with the Clerk of the Board of Supervisors within forty days from the first publication of the resolution of intention hereinbefore mentioned, the Board of Supervisors shall have power to declare such grade or grades to be changed or modified and established, in conformity with said resolution; and when such improvement or improvements are contemplated in connection with such change, or changes of grade or grades, if no protest of the owners of a majority of the superficial area of the property included within the assessment district defined in said resolution of intention shall be filed with the Clerk of the Board of Supervisors within forty days from the first publication of said resolution hereinbefore mentioned, the Board of Supervisors shall also have the power to order any of the work contemplated therein to be done, and such street or streets to be regraded, repaved, sewered, sidewalked, curbed or otherwise improved in conformity therewith.

Sec. 2. In case the resolution of intention provides for regrading, repaving, sewering, sidewalking, curbing or otherwise improving said street or streets, to said changed or modified grade, any person owning property fronting upon said portions of the street or streets where such street work is to be done, may file a petition with the Board of Public Works within sixty days after the first publication of said resolution of intention, showing the fact of such ownership, a description and situation of the property claimed to be damaged, its market value, and the estimated amount of damages over and above all benefits which the property would sustain by the proposed change if completed. Such petition shall be verified by the oath of the petitioner or his agent. A failure so to petition shall be deemed and treated as a waiver of any claim for such damage or damages, and said resolution of intention shall so declare.

Sec. 3. Whenever such petition or petitions have been filed, the Board of Public Works shall estimate and assess the benefits, damages and costs of the proposed work or improvement upon each separate lot of land situated within such assessment district as said lot appears of record upon the last City and County assessment roll.

Sec. 4. The Board of Public Works shall have power to subpoena witnesses to appear before them to be examined under oath, which any member of the Board of Public Works is authorized to administer.

Sec. 5. The Board of Public Works having determined the damages which would be sustained by each petitioner, in excess of all benefits, shall proceed to assess the total amount thereof, together with the costs, charges and expenses of the proceedings, upon the several lots of land benefited within the district of assessment, so that each of the lots shall be assessed in accordance with its benefits caused by such work or improvements.

Sec. 6. The Board of Public Works shall make their report in writing, and shall subscribe to and file the same with the Board of Supervisors. In such report they shall describe separately each piece of property which will sustain damage and for which damages have not been waived, stating the name of the owner, if known, and the amount of damages each will sustain over and above all benefits. They shall also describe separately each lot benefited within said assessment district, the name of the owner, if known, and the amount of benefits in excess of the damages assessed against the same. In describing the lots to be assessed, reference may be had to a diagram of the property in such assessment district, such diagram to be attached to and made a part of the report of the Board of Public Works. If in any case the Board of Public Works shall find that conflicting claims of title exist, or shall be in ignorance or doubt of the ownership of any lot of land, or any improvement thereon, or any interest therein, it shall be set down as belonging to unknown owners. Error in designation of the owner or owners of any land or improvement or particulars of their interest, shall not affect the validity of the assessment.

Sec. 7. On the filing of said report, the Clerk of the Board of Supervisors shall give notice of such filing by the publication of a notice for at least ten days in the official newspaper. Said notice shall require all persons interested to show cause, if any they have, before the Board of Supervisors, on a day to be fixed by the said Board and stated in said notice, which day shall not be less than twenty days from the first publication thereof, why such report should not be confirmed.

Sec. 8. All objections filed in response to said notice to show cause shall be in writing and filed with the Clerk of the Board of Supervisors, who shall, at the next meeting after the date fixed in the notice to show cause, lay the said objections, if any, before the Board of Supervisors, which shall fix a time not less than fifteen days thereafter for hearing the same, of which time the Clerk shall notify the objectors by notice published in the official newspaper for a period of five days and by depositing a notice, postage prepaid, in the United States postoffice at San Francisco, addressed to each objector at his last known place of residence, at least ten days before the date of such hearing. At the time set, or at such other time to which the hearing may be adjourned, the Board of Supervisors shall hear such objections and pass upon them, and at such time shall proceed to pass upon such report and may confirm, correct or modify the same, or may order the Board of Public Works to make a new assessment, report and plat, which shall be filed, notice given and had, as in the case of the original report.

Sec. 9. After the report of the Board of Public Works as to the damages caused by such change of grade has been finally passed upon by the Board of Supervisors, such Board of Public Works shall prepare detailed plans and specifications subject to the approval of the Board of Supervisors, for regrading, paving, sewering, sidewalking, curbing or otherwise improving such street or streets as set forth in said resolution of intention and shall then advertise for bids to perform the work of regrading, repaving, sewering, sidewalking, curbing or otherwise improving such street or streets, as the case may be, with the same or other material with which the same have been formerly graded, paved, sewered, sidewalked, curbed or otherwise improved; first causing a notice, with such specifications to be posted conspicuously for fifteen days in or near the office of the Board of Public Works, inviting sealed proposals or bids for doing such work, and shall also cause notice of said work, inviting said proposals and referring to the specifications posted and already on file, to be published five days in the official newspaper. All proposals or bids offered shall be accompanied by a check payable to the order of the Clerk of the Board of Supervisors, and certified by a responsible bank for an amount which shall not be less than ten per cent of the aggregate of the proposal, or by a bond for said amount, signed by the bidder and two sureties, who shall justify under oath in double said amount over and above all the statutory exemptions. Said proposals or bids shall be delivered to the Secretary of the Board of Public Works, and said Board of Public Works shall, in open session, examine and declare the same; provided, however, that no proposal or bid shall be received unless accompanied by a check or a bond satisfactory to the Board of Public Works. The Board of Public Works may reject any or all bids and may award the contract to the lowest responsible bidder, or may readvertise for proposals or bids for the performance of the work, as in the first instance, and thereafter proceed in the manner in this section provided; all checks accompanying bids shall be held by the Secretary of the Board of Public Works until the successful bidder has entered into a contract as herein provided, and in case he refuses so to do, then the amount of his certified check shall be declared forfeited to the city and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted and the amount thereof collected and paid into the said fund. Notice of the awards of the contracts shall be published and posted in the same manner as hereinbefore provided for the advertising for proposals for such work. Before being entitled to a contract, the successful bidder must advance to the Secretary of the Board of Public Works, for payment by him, the cost of publication of the notices, resolutions, orders, or the incidental expenses and matters required under the proceedings described by this Chapter.

Sec. 10. After such contract has been awarded and entered into, the Board of Public Works shall proceed to assess the cost and expense of doing such work upon all the lots and land lying within the district to be assessed, distributing the same so that each lot will be assessed for its proportion of the same according to the benefits it receives from the work. The Board of Public Works in making such assessment shall also include therein the total amount for which each lot, or tract is assessed for the damages resulting from the regrading, repaving, sewering, sidewalking, curbing or otherwise improving such street or streets; provided, no assessment for such damages and cost and the expense of such work shall be levied upon any property which will amount to a sum greater than 50 per centum of the value at which said property was assessed upon the last preceding assessment book of the City and County.

Sec. 11. The Secretary of the Board of Public Works shall forward to the Board of Supervisors a certified copy of the report and assessment as finally adopted by the Board of Public Works, whereupon such report and assessment shall be changed, modified or confirmed by the Board of Supervisors, and upon such modification, change, or confirmation thereof, shall be returned to the Board of Public Works and shall thereupon be the assessment roll. Immediately upon receipt thereof by the Board of Public Works, the assessment therein contained shall become due and payable and shall be a lien upon all the property contained or described therein.

Sec. 12. The Board of Public Works shall thereupon give notice by publication for ten days in the official newspaper, that it has received said assessment roll, and that all sums levied and assessed in said assessment roll are due and payable immediately, and that the payment of said sums are to be made to the Board of Public Works within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent; that thereafter the sum of five per cent upon the amount of said delinquent assessment, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said Board of Public Works, the Secretary thereof shall write the word "paid" and the date of payment opposite the respective assessments so paid, and the name of the person by or for whom said assessment is paid, and shall give a receipt therefor. On the expiration of said thirty days all assessments then unpaid shall be and become delinquent and the Secretary of said Board of Public Works shall certify such fact at the foot of said assessment roll, and shall add five per cent to the amount of each assessment so delinquent. The said Secretary of the Board of Public Works shall, within five days from the date of such delinquency, proceed to advertise the various sums delinquent and the whole thereof, including the cost of advertising, which shall not exceed the sum of fifty cents for each lot, piece or parcel of land separately assessed, in the same manner as is or may be provided for the publication of the delinquent list of State and County taxes; and after the date of said delinquency and before the time of such sale therein provided for, no assessments shall be received unless at the same time the five per cent added thereto, as aforesaid, together with the cost of advertising already incurred, shall be paid therewith. Said list of delinquent assessments, with a notice of the time and place of sale of property affected thereby, shall be published daily for five days in the official newspaper, before the sale of property for such delinquent assessments. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment list, and the place must be in or in front of the office of the Secretary of the Board of Public Works. All property sold shall be subject to redemption for one year and in the same manner as in sales for delinquent State and County taxes; and the Secretary of the Board of Public Works shall, if there be no redemption, make and deliver to the purchaser at such sale a deed conveying the property sold and may collect for each certificate fifty cents, and for each deed one dollar. The deed of the Secretary of the Board of Public Works, made for such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings thereunder, and that all title is in the grantee. The Secretary of the Board of Public Works shall, from time to time, pay over to the City Treasurer all moneys collected by him, or by the Board of Public Works, on account of such assessments, which the City Treasurer shall, upon receipt thereof, place in a separate fund, designating each fund by the name of the street, avenue, square, lane, alley, court or place for the change of grade for which the assessment was made. And the City Treasurer shall transfer to said fund such sum or sums as the Supervisors may have ordered to be paid or advanced for or on account of such improvement out of that fund in the treasury of the City and County from which such appropriation is made. Payment shall be made from said fund to the parties entitled thereto, upon warrants issued by the Secretary of the Board of Public Works on order of said Board.

Sec. 13. When sufficient money is in the hands of the City Treasurer to pay the total cost for damages, as well as the cost of doing the work, and all other expenses connected therewith, it shall be the duty of the Board of Public Works to notify the owner, possessor or occupant of the premises damaged, and to whom damages have been awarded, that a warrant has been drawn for the payment of the same, which may be received at the office of said Board of Public Works. Such notification may be made by depositing a notice, postage paid, in the United States Post Office, at San Francisco, addressed to his last known place of residence. If, after the expiration of three days from the service or deposit of the notice in the Post Office, he shall not have applied for such warrant, the same shall be drawn and deposited with the City Treasurer to be delivered to him upon demand.

Sec. 14. After the contractor to whom has been awarded the contract for regrading, repaving, sewering, sidewalking, curbing, or otherwise improving such street or streets, has fulfilled his contract to the satisfaction of the Board of Public Works and the City Engineer has certified to the completion of said work, the Secretary of the Board of Public Works, on order of said Board, shall issue a warrant, payable out of said fund, in favor of such contractor in payment for such work.

Sec. 15. In case of a deficiency of the fund to pay the whole assessed cost and damages, the Board of Supervisors may in its discretion, order the balance thereof to be distributed by the Board of Public Works upon the property assessed, by a supplementary assessment, or direct the payment of such balance to be made from the City Treasury; but in the event that a supplementary assessment is ordered, in order to avoid delay, the Board of Supervisors may advance such balance out of any available fund in the Treasury and reimburse the same from the collection of assessments. The Treasurer shall pay such warrants in the order of their presentation.

Sec. 16. The Board of Supervisors may, in its discretion, order, by ordinance, that the whole or any part of the cost and expense of any of the work hereinbefore in this Chapter mentioned or the damages resulting therefrom, be paid out of the Treasury of the City and County from such fund as the Board of Supervisors may designate. Whenever a part of such cost or expense is so ordered to be paid before the making of an assessment therefor, the Board of Public Works, in making up the assessment heretofore provided for such cost or expense, shall first deduct from the whole cost and expense such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said cost and expense proportionately upon the lots, parts of lots and lands in said assessment district, or liable to be assessed for such work, and in the manner hereinbefore provided.

That the title of Chapter III of Article VI of said Charter be changed so as to read as follows:

CHAPTER III.

Opening, Extending, Widening, Straightening or Closing up of Streets and the Condemnation and Acquisition of Land and Property Necessary Therefor and the Performance of Street Work in Connection Therewith.

That Sections 1 to 19 inclusive of Chapter III of Article VI of said Charter providing for the opening, straightening, widening and extending of streets, be repealed.

That new sections be added to Chapter III of Article VI of the Charter, to be known and designated as Sections 1 to 19 inclusive of Chapter III of said article, and to read as follows:

Section 1. Whenever the public interest or convenience may require, the Supervisors shall have full power and authority to order the opening, extending, widening, straightening or closing up, in whole or in part, of any street, avenue, lane, alley, court, or place within the City and County and to condemn and acquire any and all land and property necessary and convenient for that purpose.

Sec. 2. Before ordering any work to be done or improvement made, which is authorized by the preceding section, the Supervisors shall pass a resolution declaring their intention so to do, describing the work or improvement, and the land deemed necessary to be taken therefor, and specifying the exterior boundaries of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the damages, costs, and expenses thereof.

The Supervisors may, in and by said resolution, declare and determine that the whole cost and expense of such work or improvement, or any proportion thereof, shall be paid out of the revenues of the City and County.

Sec. 3. The Clerk of the Supervisors shall transmit to the Board of Public Works a certified copy of such resolution, and upon receipt thereof said Board of Public Works shall cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred feet in distance apart, but not less than three in all, notices of the passage of said resolution. Said notice shall be headed "Notice of Public Work" in letters not less than one inch in length, shall be in legible characters, state the fact of the passage of the resolution, its date, and briefly the work of improvement proposed, and refer to the resolution for further particulars. Said Board shall also cause a notice, similar in substance, to be published for a period of ten days in the official newspaper.

Sec. 4. Any person interested objecting to said work or improvement, or to the extent of the district or lands to be affected or benefited by said work or improvement, and to be assessed to pay the cost and expenses thereof, may make written objections to the same within ten days after the expiration of the time of the publication of said notice, which objection shall be delivered to the Clerk of the Supervisors, who shall indorse thereon the date of its reception by him, and at the next meeting of the Supervisors after the expiration of said ten days lay said objection before the Supervisors, who shall fix a time for hearing said objections, not less than one week thereafter. The Clerk of the Supervisors shall notify the persons making such objections by depositing a notice thereof in the Postoffice, postage prepaid, addressed to such objector.

Sec. 5. At the time specified, or to which the hearing may be adjourned, the Supervisors shall hear the objections urged, and pass upon the same, and their decision shall be final and conclusive. If such objections are sustained all proceedings shall be stopped, but proceedings may again be commenced at any time by giving notice of intention to do said work or make said improvement. If such objection is overruled by the Supervisors, the proceedings shall continue the same as if such objection had not been made. At the expiration of the time prescribed, during which objections to said work or improvement may be made, if no objections shall have been made, or if objections shall have been made, and the Supervisors, after hearing, shall have overruled the same, the Supervisors shall be deemed to have acquired jurisdiction to order any of the work to be done or improvement to be made which are authorized by Section 1 of this Chapter, and by resolution shall order said work to be done or improvement to be made, as the case may be.

Sec. 6. Upon the passage of said resolution the Clerk of the Supervisors shall transmit a certified copy thereof to the Board of Public Works. Upon receipt of the same said Board of Public Works shall proceed to view the lands described in the resolution of intention, and may examine witnesses on oath to be administered by any member of said Board in relation thereto. Having viewed the land to be taken, and the improvements affected, and considered the testimony presented, they shall proceed with all diligence to determine the value of the land and the damage to improvements and property affected, and also the amount of the expenses incident to said work or improvement, and, having determined the same, shall proceed to assess the same upon the district of lands declared benefited, the exterior boundaries of which were fixed by the resolution of intention provided for by Section 2 hereof. Such assessment shall be made upon the lands within said district in proportion to the benefit to be derived from said work or improvement, so far as said Board can reasonably estimate the same, including in such estimate the property of any railroad company within said district, if such there be. In case, however, the Supervisors shall have declared that the whole of such expense shall be paid out of the revenues of the City and County, then no such assessment shall be made, but the Board of Public Works shall, in such event, report to the Supervisors in detail an estimate of the value of the land to be taken, the damages to improvements and the amount of expenses incident to said work, and if the Supervisors shall approve such estimate they shall order the amount so fixed to be paid to the persons respectively entitled thereto, as in Section 15 hereof provided.

Sec. 7. Said Board of Public Works having made their assessment of benefits and damages, shall, with all diligence, make a written report thereof to the Supervisors, and shall accompany their report with a plat of the assessment district showing the land taken or to be taken for the work or improvement, and the lands assessed, showing the relative location of each district, block, lot or portion of lot, and its dimensions, so far as can be reasonably ascertained. Each block or lot, or portion of lot, taken or assessed, shall be designated and described in said plat by an appropriate number, and a reference to it by such descriptive number shall be a sufficient description of it in any suit entered to condemn, and in all respects. When the report and plat are approved by the Supervisors, a copy of said plat, appropriately designated, shall be filed by the Clerk thereof in the office of the Recorder of the City and County.

Sec. 8. Said report shall specify each lot, subdivision or piece of property taken or injured in the widening or other improvement, or assessed therefor, together with the name of the owner or claimants thereof, or of persons interested therein as lessees, encumbrancers, or otherwise, so far as the same are known to said Board of Public Works, and the particulars of their interest so far as the same can be ascertained, and the amount of value or damage, or the amount assessed, as the case may be.

Sec. 9. If in any case the Board of Public Works find that conflicting claims of title exist, or if they shall be in ignorance or doubt as to the ownership of any lot of land, or of any improvements thereon, or of any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any lot of land or improvements, or of the particulars of their interest, shall not affect the validity of the assessment or of the condemnation of the property to be taken.

Sec. 10. Said report and plat shall be filed in the Clerk's office of the Supervisors, and thereupon the Clerk of said Board shall give notice of such filing by publication for at least ten days in the official newspaper. Said notice shall also require all persons interested to show cause, if any, why such report should not be confirmed, before the Supervisors on or before a day fixed by the Clerk thereof, and stated in said notice, which day shall not be less than thirty days from the first publication thereof.

Sec. 11. All objections shall be in writing, and filed with the Clerk of the Supervisors, who shall, at the next meeting after the day fixed in the notice to show cause, lay the said objections, if any, before the Supervisors, who shall fix a time for hearing the same, of which the Clerk shall notify the objectors in the same manner as objectors to the original resolution of intention. At the time set, or at such other time as the hearing may be adjourned to, the Supervisors shall hear such objections and pass upon the same; and at such time, or, if there be no objections, at the first meeting after the day set in said order to show cause, or such other time as may be fixed, shall proceed to pass upon such report, and may confirm, correct or modify the same, or may order the Board of Public Works to make a new assessment, report and plat, which shall be filed, notice given, and hearing had, as in the case of an original report. If the Supervisors shall have determined that a certain proportion of the cost and expense of such work and improvement shall be paid out of the revenues of the City and County, they shall deduct such proportion from the total amount of the cost and expense thereof as finally fixed and determined in and by said assessment and report, and the amount of such proportion shall be paid out of any revenues appropriated for such purpose to the persons respectively entitled thereto, at the same time and in the same manner as in Section 15 hereof provided, and the balance shall be raised by assessment as hereinafter provided.

Sec. 12. The Clerk of the Supervisors shall forward to the Board of Public Works a certified copy of the report, assessment and plat, as finally confirmed and adopted by the Supervisors, with a statement of any deduction that may be made on account of payments made out of the revenues of the City and County, as in Section 11 provided. Such certified copy shall thereupon be the assessment-roll. Immediately upon receipt thereof by the Board of Public Works the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein.

Sec. 13. The Board of Public Works shall thereupon give notice by publication in the official newspaper for ten days that it has received said assessment-roll, and that all sums levied and assessed in said assessment roll are due and payable immediately, and that the payment of said sums is to be made to said Board within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of each delinquent assessment, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said Board of Public Works it shall cause to be written the word "paid," and the date of payment, opposite the respective assessments so paid, and the names of persons by or for whom said assessment is paid, and shall, if so required, give a receipt therefor. On the expiration of said thirty days all assessments then unpaid shall be and become delinquent, and said Board of Public Works shall certify such fact at the foot of said assessment roll and shall add five per cent to the amount of each assessment so delinquent.

Sec. 14. The said Board of Public Works shall, within five days after the date of said delinquency, proceed to advertise and collect the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty (50) cents for each lot, piece or parcel of land separately assessed, by the sale of the assessed property in the same manner as is or may be provided for the collection of state and county taxes; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received unless at the same time the five per cent added thereto, as aforesaid, together with the costs of advertising then already incurred, shall be paid therewith. Said list of delinquent assessments shall be published for five days in the official newspaper before the day of sale of such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment list, and the place must be in or in front of the office of said Board of Public Works. All property sold shall be subject to redemption in the same time and manner as in sales for delinquent state and county taxes; and the Board of Public Works may collect for each certificate fifty cents and for each deed one dollar. All provisions of the law, in reference to the same and redemption of property, for delinquent state and county taxes in force at any given time, shall also then, so far as the same are not in conflict with the provisions of this act, be applicable to the sale and redemption of property for delinquent assessments hereunder, including the issuance of certain certificates and execution of deeds. The deed of the Board of Public Works made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the grantee. It shall be conclusive evidence of the necessity of taking or damaging the lands taken or damaged, and of the correctness of the compensation awarded therefor. The Board of Public Works shall, from time to time, pay over to the City Treasurer all moneys collected by it on account of any such assessments. The Treasurer shall, upon receipt thereof, place the same in a separate fund, designating such fund by the name of the street, avenue, square, lane, alley, court or place for the widening, opening or other improvement of which the assessment was made. Payment shall be made from said fund to the parties entitled thereto, upon warrants signed by the members of the Board of Public Works, or a majority of them.

Sec. 15. When sufficient money is in the hands of the Treasurer, in the fund devoted to the particular work or improvement, to pay for the lands and improvements taken or damaged, and when in the discretion of the Board of Public Works the time shall have come to make payments, it shall be the duty of said Board to notify the owner, possessor or occupant of any land or improvements thereon to whom damages shall have been awarded, that a warrant has been drawn for the payment of the same, and that he can receive such warrant at the office of said Board upon tendering a conveyance of any property to be taken; such notification, except in the case of unknown owners, to be made by depositing a notice, postage paid, in the postoffice. addressed to his last known place of abode or residence. If at the expiration of thirty days after the deposit of such notice he should not have applied for such warrant, and tendered a conveyance of the land to be taken, the warrant so drawn shall be deposited with the Treasurer and shall be delivered to such owner, possessor or occupant upon tendering a conveyance as aforesaid, unless judgment of condemnation shall be had, when the same shall be canceled.

Sec. 16. If any owner of land to be taken neglects or refuses to accept the warrant drawn in his favor as aforesaid, or objects to the report as to the necessity of taking his land, the Board of Public Works shall report such facts to the Supervisors, who shall thereupon cause proceedings to be taken for the condemnation thereof, as provided by law under the right of eminent domain. The complaint may aver that it is necessary for the city to take or damage and condemn the said lands, or an easement therein, as the case may be, without setting forth the proceedings herein provided for, and the resolution and ordinance ordering said work to be done shall be conclusive evidence of such necessity. Such proceedings shall be brought in the name of the City and County, and have precedence, so far as the business of the court will permit, and any judgment for damages therein rendered shall be payable out of such portion of the special fund as may remain in the treasury, so far as the same can be applied. At any time after trial and after judgment has been entered, or preceding an appeal, the court may order the Treasurer to set apart in the Treasury a sufficient sum from the fund appropriated to the particular improvement to answer the judgment and all damages, and thereupon may authorize and order the City and County to enter upon the land and proceed with the proposed work and improvement. In case of a deficiency in said fund to pay the whole of such judgment and damages, the Supervisors may, in their discretion, order the balance thereof to be paid out of the general fund of the treasury or to be distributed by the Board of Public Works over the property by a supplementary assessment; but in the last-named case, in order to avoid delay, the Supervisors may advance such balance out of any appropriate fund in the Treasury, and reimburse the same from the collections of the assessment. Pending the collection and payment of the amount of the judgment and damages, the court may order such stay of proceedings as may be necessary.

Sec. 17. The Treasurer shall pay such warrants out of the appropriate fund, and not otherwise, in the order of their presentation, provided, that warrants for land or improvements taken or damaged shall have priority over warrants for charges and expenses, and the Treasurer shall see that sufficient money is and remains in the fund to pay all warrants of the first class before paying any of the second.

Sec. 18. If after the sale of property for delinquent assessments there should be a deficiency, and there should be unreasonable delay in collecting the same, or if for the purpose of equalizing the assessments supplying a deficiency, or for any cause it appears desirable, the Board of Public Works may so report to the Supervisors, who may order them to make a supplementary assessment and report the same in manner and form as the original, and subject to the same procedure. If by reason of such supplementary assessment, or for any cause, there should be at any time a surplus, the Supervisors may appropriate the same and declare a dividend pro rata to the parties paying the same, and they, upon demand, shall have the right to have the amount of such pro rata dividends refunded to them, or credited upon any subsequent assessment for taxes made against said parties in favor of said City and County.

Sec. 19. If any title attempted to be acquired by virtue of this Act shall be found to be defective from any cause the Supervisors may again institute proceedings to acquire the same as in this Chapter provided, or otherwise, or may authorize the Board of Public Works to purchase the same and include the cost thereof in a supplementary assessment, as provided in the last section.

That Section 5 of Article I of said Charter be amended to read as follows:

Sec. 5. No recourse shall be had against the City and County for damage or loss to person or property suffered or sustained by reason of the defective condition of any sidewalk, street, avenue, lane, alley, court, or place, or by reason of the defective condition of any sewer, or by reason of any defective drainage, whether any of said defects originally existed, or whether they were occasioned by construction, excavation or embankment; nor shall there be any recourse against the City and County for want of repair of any sidewalk, street, avenue, lane, alley, court or place, or by want of repair of any sewer; nor shall there be any recourse against the City and County for damage to person or property suffered or sustained by reason of accident on any sidewalk, street, avenue, lane, alley, court or place, or by falling from any embankment thereon or into any excavation therein; but in any such case the person or persons on whom the law may have imposed the obligation to repair such defect in the sidewalk, street or public highway, or in the sewer, and also the officer or officers through whose official negligence such defect remains unrepaired, shall be jointly and severally liable to the party injured for the damage sustained; provided, that notice in writing of the existence of such defect shall have been served upon such person or persons, officer or officers, at least ten days before such damage shall have been sustained; and provided, further, that there are at such time funds available for repairing such defect.

That Subdivision 11 of Section 1 of Chapter III of Article VII of said Charter be amended to read as follows:

Subd. 11. To lease to the highest responsible bidder, for the benefit of the Common School Fund, for a term not exceeding thirty-five years, any real property of the School Department not required for school purposes; but no lease shall be made except after advertisement for bids for at least sixty days in the official newspaper and one other daily newspaper of general circulation, published in the City and County, and by an affirmative vote of at least three members of the Board of Education and approved by an ordinance of the Board of Supervisors, passed by a vote of at least fifteen of its members, and approved by the Mayor; and provided that at the expiration of the term of said lease all buildings and improvements erected shall revert to and become the property of the School Department of the City and County.

That Subdivision 3, of Section 1, of Chapter II, of Article II of said Charter be amended to read as follows:

Subd. 3. To permit the laying down of spur or side tracks and running cars thereon for industrial purposes only, for the purpose of connecting warehouses, manufactories, or other business industries and enterprises with the Belt Line of railroads along the water front or other lines of railroad which now or may hereafter enter the City and County, subject to such regulations and conditions as may be prescribed from time to time by said Board of Supervisors; such tracks to be used for transportation of freight only, and not to be used as a main line or a part thereof; and also for the purpose of excavating and filling in a street or portion of a street or the adjoining land, and for such limited time as may be necessary for such purpose and no longer.

Such tracks must be laid level with the street and must be operated under such restrictions as not to interfere with the use of such streets by the public. All permits granted under the provisions hereof shall be revocable at the pleasure of the Board of Supervisors. All spur or side tracks laid down and in use on the first day of July, 1907, shall be deemed to have been laid down and to be in use by permission of the Board of Supervisors, subject to the provisions of this section.

That Subdivision 14, of Section 1, of Chapter II, of Article II of said Charter be amended to read as follows:

Subd. 14. To fix and determine by ordinance in the month of February of each year, to take effect on the first day of July thereafter, the rates or compensation to be collected by any person, company or corporation in the City and County, for the use of water, heat, light, power or telephonic service, supplied to the City and County, or to the inhabitants thereof, and to prescribe the quality of the service.

That Section 1 of Article XIV of said Charter be amended to read as follows:

Section 1. The lands designated upon the Map of the Outside Lands of the City and County, made pursuant to Order No. 800, by the word "Park," extending from Stanyan street to the Pacific Ocean, and known as Golden Gate Park; also the land fronting on Haight street, designated on said map by the word "Park," and known as Buena Vista Park; also the lands designated on said Map by the word "Avenue," extending from Baker street westward until it crosses Stanyan street; also that certain highway bounded on the west by the Pacific Ocean, and designated upon said map as "Great Highway"; also Mountain Lake Park; also Seal Rocks, as ceded to the City and County of San Francisco by act of Congress; and all the other parks and squares in the City and County, and all the grounds surrounding public buildings in the City and County, and all parks and squares and public pleasure grounds hereafter acquired by the City and County, shall be under the exclusive management of a Board of Commissioners who shall be known and designated as Park Commissioners, except that children's playgrounds and recreation centers outside of Golden Gate Park shall, to the extent of their use as such playgrounds and recreation centers, be under the exclusive management and control of the Playground Commissioners.

That a new article be added to said Charter, to be known and numbered Article XIV-A, and to read as follows:

ARTICLE XIV-A.

Playground Commissioners.

Section 1. All children's playgrounds now owned by the City and County, and all children's playgrounds that shall hereafter be acquired by the City and County, and all public recreation centers, other than those located in Golden Gate Park, shall be under the management and control of a Board of Commissioners, which shall consist of men and women, and shall be known and designated as the Playground Commissioners. No person shall be appointed such Commissioner who shall not be at the time of his or her appointment a resident of the City and County, and who shall not have been such at least five years prior thereto.

Sec. 2. The Commissioners shall be seven in number, five of whom shall be appointed by the Mayor for the term of four years. Three of the members appointed by the Mayor shall be men and two of them shall be women. The President of the Board of Education shall be ex-officio the sixth member of the Commission, and either the President of the Park Commissioners or the Superintendent of Golden Gate Park, as the Park Commissioners in writing may appoint, shall be ex-officio the seventh member. The Park Commissioners may at any time, by resolution served upon the Playground Commissioners, change their ex-officio member of said Commission, provided that such ex-officio member be always either their President or said Superintendent. None of said Commissioners shall receive any compensation for his or her services.

Sec. 3. The Commissioners shall organize by electing one of their number President, who shall hold office for one year or until his or her successor is elected, and they may elect a Secretary who is not a member of the Board.

A majority of the members shall constitute a quorum for the transaction of business. The Board shall hold regular meetings at least once in two weeks, and as many special meetings as it may deem proper.

The Board shall establish rules and regulations for its government and for the performance of its duties, and for the conduct of its officers and employees, and shall require adequate bonds from all its officers and employees, except laborers, for the faithful performance of their duties, and in such sums as may be fixed by it, such bonds shall be approved by the Mayor and filed in the office of the Auditor.

Sec. 4. The Commissioners shall adopt rules and regulations for the government of the aforesaid playgrounds not inconsistent with the ordinances of the City and County of San Francisco, the laws of the State of California or with this Charter.

Sec. 5. The Commissioners shall have complete and exclusive control, management and direction of the aforesaid playgrounds and recreation centers, and the exclusive right to erect and to superintend the erection of buildings and structures thereon, and to that end they may employ superintendents, surveyors, engineers, laborers and other employees and assistants and prescribe and fix their duties, authority and compensation. They shall have the exclusive management and disbursement of all funds legally appropriated or received from any source for the support and equipment of the aforesaid playgrounds and recreation centers, provided, that such management of any real or personal property or moneys acquired by loan, gift, devise or bequest, is not inconsistent with the terms and conditions of the loan, gift, devise, or bequest. The Commissioners may purchase in the name of the City and County of

San Francisco lands to be used as children's playgrounds and recreation centers, with any moneys legally appropriated for such purpose or acquired by gift, legacy or bequest for such purpose.

Sec. 6. The Board may receive donations from persons and corporations, and legacies and bequests for the purchase, improvement and equipment of playgrounds and recreation centers. All moneys that may be derived from such donations, legacies and bequests shall, unless otherwise provided by the terms of such gift, donation, legacy or bequest, be deposited in the treasury of the City and County to the account of the Playground Fund of the General Fund. The same may be withdrawn therefrom and paid out in the same manner as is provided for the payment of moneys legally appropriated for the support and improvement of such playgrounds and recreation centers. If such moneys shall at any time exceed in amount the sum necessary for immediate expenditure on said playgrounds or recreation centers the Board may invest all or part of the same in interest-bearing bonds of the United States, of the State of California or of any municipality therein.

Sec. 7. The Chief of Police shall on request of the Commissioners detail such members of the Police Force of the City and County for service in said playgrounds and recreation centers as may be necessary for the enforcement of the law and the city ordinances and the proper observance of the rules and regulations of the Commissioners.

Sec. 8. The Supervisors shall have the power to set apart either absolutely or for a definite period of time, any land not improved with any public buildings belonging to the City and County other than land under the exclusive control and management of the Park Commissioners, and land acquired by the issue of bonds for other specific purpose, for use as children's playgrounds and recreation centers, and the same shall, when so set apart for such use, be under the exclusive control and management of the Playground Commissioners.

Sec. 9. The Park Commissioners shall have power to set apart either absolutely or for a definite period of time such parks and squares or portions thereof as they may see proper, other than Golden Gate Park and the Mission Park, for use as children's playgrounds and recreation centers, and the same shall, when so set apart for such use, be, to the extent of that use, under the exclusive control and management of the Playground Commissioners.

Sec. 10. The Supervisors shall, for the purchase, development, equipment and maintenance of the aforesaid playgrounds and recreation centers, annually appropriate to the Playground Commissioners at the time of making the Budget such amount as may in their judgment be necessary or proper, and the funds so appropriated shall be credited to the Playground Fund of the General Fund, and the Playground Commissioners shall have the exclusive management and disbursement of the same.

The Secretary shall keep a full account of all property, money, receipts and expenditures and a record of all proceedings of the Commissioners. The votes of all its members shall be recorded in the minutes with the ayes and noes.

That Section 1 of Article X of said Charter be amended to read as follows:

Section 1. There shall be a Department of Public Health under the management of a Board of Health. The board shall consist of seven members, all of whom shall be appointed by the Mayor, and three only of whom shall be physicians. Said physicians shall be regularly certificated physicians of the City and County at the time of their appointment, and must have been such for at least five years next preceding their appointment. The members of the board shall serve without compensation. They shall elect one of their members president, and shall adopt such rules and regulations as may be necessary for the government of the board.

That Section 2 of Article X thereof be amended to read as follows:

Sec. 2. The appointed members of the board, excepting those first appointed, shall hold office for seven years. Those first appointed under this Charter shall so classify themselves by lot that one of them shall go out of office at the end of one year; one at the end of two years; one at the end of three years; one at the end of four years; one at the end of five years; one at the end of six years; and one at the end of seven years.

Within 30 days after the ratification of this amendment by the Legislature of the State of California, the offices of the then incumbent members of the Board of Health shall become vacant, and the Mayor shall thereupon proceed to appoint a Board of Health pursuant to the provisions of the preceding section.

That Sections 2 and 3 of Chapter IX of Article IX of said Charter be amended to read as follows:

Sec. 2. There shall be appointed by the Board of Fire Commissioners and Board of Police Commissioners, acting in joint session, a practical and skilled Electrician, and who shall have general supervision of the Department of Electricity. He shall receive a salary of $3000 per annum.

Sec. 3. The Joint Commission may appoint such assistants and other employees as may be necessary to efficiently maintain, extend and repair the Department of Electricity at all times. All appointments shall be made subject to the provisions of Article XIII hereof. The number and compensation of all such assistants and other employees of the Department of Electricity shall be fixed annually by the Supervisors, but no compensation to any of such persons shall be greater than is paid in similar employments. Any person who, under a classification of positions by the Civil Service Commission, has been appointed in conformity with Article XIII of this Charter and who has served the probation period required by said Article is hereby declared appointed within the provisions of the Article XIII to said position so classified.

State of California, }
City and County of San Francisco, } ss.

This is to certify that we, Edward R. Taylor, Mayor of the City and County of San Francisco, and John E. Behan, Clerk of the Board of Supervisors of said City and County, have compared the foregoing proposed and ratified amendments to the Charter of the said City and County of San Francisco with the original proposals submitting the same to the electors of said City and County at a General Municipal Election held on Tuesday, the Fifth day of November One Thousand Nine Hundred and Seven, and find that the foregoing is a full, true, correct and exact copy thereof, and we further certify that the facts set forth in the preamble preceding said amendments to said Charter are and each of them is true.

In Witness Whereof, we have hereunto set our hands and caused the same to be authenticated by the seal of said City and County of San Francisco, this 20th day of November One Thousand Nine Hundred and Seven.

EDWARD R. TAYLOR,
Mayor of the City and County of San Francisco.
[Seal] JOHN E. BEHAN,
Clerk of the Board of Supervisors of the City and County of San Francisco.

Now, therefore be it

Resolved, by the Senate of the State of California, the Assembly thereof concurring (a majority of all of the members elected to each house voting for and concurring herein), That said amendments to the Charter of the City and County of San Francisco as proposed to and adopted and ratified by the electors of said City and County and as hereinbefore fully set forth, be and the same are, and each of them is, hereby approved as a whole without amendment or alteration, for and as amendments to, and as part of the Charter of the City and County of San Francisco.

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